

STATE OF TEXAS VS. RUBEN GUTIERREZ

73462

1

REPORTER'S RECORD

VOLUME 9 OF 32 VOLUMES

TRIAL COURT CAUSE NO. 98-CR-1391-A

- - - - - X
: THE STATE OF TEXAS : IN THE DISTRICT COURT
: VS. : 107TH JUDICIAL DISTRICT
: RUBEN GUTIERREZ : CAMERON COUNTY, TEXAS
: - - - - - X

INDIVIDUAL VOIR DIRE

On the 29th day of March, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Benjamin Euresti, Jr., Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by machine shorthand.

A P P E A R A N C E S

APPEARING FOR THE STATE OF TEXAS:

HON. JOHN T. BLAYLOCK
State Bar No. 00784302
HON. KAREN L. FISCHER
State Bar No. 00790685
Assistant District Attorneys
Cameron County Courthouse
974 East Harrison
Brownsville, Texas 78520
(956) 544-0849

FILED IN
COURT OF CRIMINAL APPEALS
DEC 8 1999
Troy C. Bennett, Jr., Clerk

ORIGINAL

PAM L. ESQUIVEL, CSR, RPR

STATE OF TEXAS VS. RUBEN GUTIERREZ

2

1 APPEARANCES CONTINUED:

2 APPEARING FOR THE DEFENDANT:

3 HON. SANTIAGO GALARZA
4 State Bar No. 00787508
5 Law Offices of Santiago Galarza
6 3100 East 14th Street
7 Brownsville, Texas 78521
8 (956) 541-4157

9 AND

10 HON. DANIEL R. REYES
11 State Bar No. 16794290
12 Perez & Reyes
13 316 Nolana Loop
14 McAllen, Texas 78504
15 (956) 972-1414
16
17
18
19
20
21
22
23
24
25

PAM L. ESQUIVEL, CSR, RPR

STATE OF TEXAS VS. RUBEN GUTIERREZ

i

VOLUME 9

CHRONOLOGICAL INDEX

MARCH 29, 1999

INDIVIDUAL VOIR DIRE:

NAME	STATE	DEFENSE	VOL
Anita Anaya	5	18	9
Lydia Caldera	50	63	9
Eric Escobedo	79	94	9
Monica Rivera	131	163	9
Ricardo Santana	---	---	9
America Barrera Lopez	197	---	9
Velma Lazo Peralez	203	231	9

	PAGE	VOL
Adjournment.....	264	9
Court Reporter's Certificate.....	265	9

ALPHABETICAL INDEX

NAME	STATE	DEFENSE	VOL
Anaya, Anita	5	18	9
Caldera, Lydia	50	63	9
Escobedo, Eric	79	94	9
Lopez, America Barrera	197	---	9
Peralez, Velma Lazo	203	231	9
Rivera, Monica	131	163	9
Santana, Ricardo	---	---	9

STATE OF TEXAS VS. RUBEN GUTIERREZ

3

1 P R O C E E D I N G S

2 (Open court, defendant not present)

3 THE COURT: All right. You may be seated.
4 Where is the note?

5 THE BAILIFF: The note, Your Honor,
6 Mr. Santiago Galarza has it.

7 MR. GALARZA: We have it, Your Honor.

8 THE COURT: Okay. For the record, we have
9 a report from the Cameron County Sheriff's Office in
10 reference to this defendant, Ruben Gutierrez. And it
11 states that -- the incident report is that the defendant
12 refused to go to court. It's dated March the 29th. The
13 time is 7:44 a.m. And it states that the defendant
14 stated he did not want to go to court due to feeling
15 sick. No medical request form was found, and he advises
16 of sending one to see the medical staff about illness.

17 Okay. Do you want to put anything on the
18 record, counsel?

19 MR. GALARZA: Your Honor, just for the
20 record, we want to go ahead and object to proceeding with
21 the matter at this time since he is sick and he's not
22 here right now. This is something that probably just
23 happened to him either this weekend or -- because the
24 last time we spoke to him was on Friday.

25 THE COURT: All right. Do you want to put

STATE OF TEXAS VS. RUBEN GUTIERREZ

4

1 anything on the record, counsel?

2 MR. BLAYLOCK: The State's perfectly
3 willing to have him sit here next to his attorneys while
4 he's sick.

5 THE COURT: All right. Then let's
6 proceed.

7 Bring her in.

8 All right. Good morning, Ms. Anaya.

9 MS. ANAYA: Good morning.

10 THE COURT: How are you?

11 MS. ANAYA: Fine.

12 THE COURT: Okay. Sorry we had to
13 reschedule you, but things took longer than we thought,
14 but we're ready to proceed at this time. If you could,
15 please speak into the microphone so everybody can hear
16 you.

17 MS. ANAYA: Okay.

18 THE COURT: Thank you.

19 All right. You may proceed.

20 MS. FISCHER: Thank you, Judge.

21

22

23

24

25

STATE OF TEXAS VS. RUBEN GUTIERREZ

5

1 **ANITA ANAYA,**
2 having been called as a prospective juror and, upon
3 her oath, was examined and testified as follows:

4 **VOIR DIRE EXAMINATION**

5 **BY MS. FISCHER:**

6 Q. Good morning, ma'am.

7 A. Good morning.

8 Q. My name is Karen Fischer. This is John
9 Blaylock.

10 A. Uh-huh.

11 Q. We work for the District Attorney's Office.
12 That means we present the people of Cameron County here
13 today.

14 I have had an opportunity to read your
15 questionnaire. And I appreciate you filling that out for
16 us because it helps me know a little bit more about how
17 you feel about things regarding this particular case.

18 But there's a couple of questions I want
19 to ask you about the questionnaire; and the first of
20 which is when we asked you if you took medicine
21 regularly, you said that you did take regular medication.

22 A. Uh-huh.

23 Q. Is there anything about that that would cause
24 you to have a problem being a juror in this case knowing
25 you may have to sit still for long periods of time and

STATE OF TEXAS VS. RUBEN GUTIERREZ

6

1 that you pretty much stay in this courtroom from 9:00
2 'til 5:00 every day?

3 A. No.

4 Q. Okay. And there was another question that I
5 want to ask you about; and this is where we start to get
6 to kind of the personal issues and I need to know your
7 feelings. You said that you have known people, or maybe
8 even yourself, that have been a victim of a crime. Can
9 you tell me who it is that you know that was a victim of
10 a crime?

11 A. Well, just like -- not victims, just like when
12 they're drunk, you know, driving, D.W.I., that's all.

13 Q. Is that someone in your family?

14 A. Yes.

15 Q. Okay. Did they have to go to court and be
16 punished and all that for what they did?

17 A. Well, no. They just got, you know, the penalty
18 that they have to pay.

19 Q. Okay.

20 A. And right now, well, I have a cousin that's in
21 prison because -- about that, you know. He had more than
22 one. So I rarely talk to him. So --

23 Q. Do you think these people were treated fairly
24 by the system, by the criminal justice system?

25 A. Well, I think so because I don't think they

STATE OF TEXAS VS. RUBEN GUTIERREZ

7

1 should be driving drunk.

2 Q. Okay. Anything about that going to cause to
3 you to be prejudiced in this case? Are you going to hold
4 it against anyone because of what you know about what
5 happened to them?

6 A. No.

7 Q. Okay. Now, of course, the reason why you're
8 here today talking to us one-on-one, you know that this
9 case involves the defendant being charged with the
10 offense of capital murder.

11 A. Uh-huh.

12 Q. That means the death penalty could be an
13 appropriate punishment in this case if after answering
14 some questions the jury decided that it was.

15 How a criminal trial works, it's in two
16 parts.

17 A. Uh-huh.

18 Q. Now, the first part is the part where you have
19 to make a decision as a juror as to whether or not you
20 think the defendant is guilty or innocent, whether or not
21 you think he committed the crime.

22 A. Uh-huh.

23 Q. That's the first part. The second part, then,
24 is if you do find beyond a reasonable doubt that he did
25 commit the crime, he is guilty, then you as the jury will

STATE OF TEXAS VS. RUBEN GUTIERREZ

8

1 be asked to assess punishment.

2 A. Uh-huh.

3 Q. And it's during the punishment phase that you
4 will be asked some questions. And based on your answers
5 to those questions, the death penalty may or may not be
6 imposed by the Judge.

7 So now, let's talk about the
8 guilt/innocence phase for just a minute. What happens is
9 the State brings you witnesses. They tell you the facts
10 about the case. They tell you what happened. And you
11 make your decision based on that.

12 A. Uh-huh.

13 Q. The burden of proof, the standard that you have
14 to use is beyond a reasonable doubt. That is the
15 standard. I think Mr. Blaylock or somebody read that
16 definition last week when you were here. And basically
17 it's a real, long, legal definition, but basically it
18 asks you to use your reason and your common sense as to
19 whether or not the person's guilty. That's the standard.
20 The standard is the same for all cases, whether it be a
21 D.W.I. or a capital murder case.

22 But when you answered one of your
23 questions, when we asked you, "Would you hold the State
24 to a higher standard in a capital murder case?" You
25 answered, "Yes."

STATE OF TEXAS VS. RUBEN GUTIERREZ

9

1 Tell me why you think the State should be
2 held to a higher standard.

3 A. Well, because I think some of the criminal
4 things should be punished, you know, to the higher,
5 but --

6 Q. Okay. Punishment is different, yeah.
7 Punishment is more severe. The worse the crime, the more
8 severe the punishment.

9 A. Yes.

10 Q. Okay. Is that how you feel?

11 A. Uh-huh.

12 Q. Okay. But as far as having to prove it, when
13 you come into court and you're a juror, I don't have to
14 prove it to you beyond all doubt or beyond a shadow of a
15 doubt. Sometimes you hear that on television --

16 A. Yeah.

17 Q. -- beyond a shadow of a doubt. That's not what
18 the legal standard is. In Texas the legal standard is
19 beyond a reasonable doubt, okay? So you can have a
20 doubt, but it has to be proved to you beyond a reasonable
21 doubt. That's the standard, okay? That's what the law
22 is.

23 A. Yes.

24 Q. Can you follow that law?

25 A. I think I can.

STATE OF TEXAS VS. RUBEN GUTIERREZ

10

1 Q. Okay. And so that -- and you understand, then,
2 that for D.W.I. and capital murder, killing somebody and
3 driving while intoxicated, same burden?

4 A. Yes.

5 Q. Okay. Not any different. The law stays the
6 same --

7 A. Uh-huh.

8 Q. -- okay? So, then, the law says I do not have
9 to prove the case to you beyond a shadow of a doubt. Do
10 you understand that? That's what the law is.

11 A. Uh-huh.

12 Q. Can you follow that law?

13 A. I think so.

14 Q. Okay. That's what I need you to do because you
15 need to understand that we need people, we need 12 folks
16 who can be fair and impartial and not -- you know, if you
17 have like a hidden prejudice that says, "Well, I think it
18 has to be 100 percent --"

19 A. Uh-huh.

20 Q. -- you may not be a good juror, you know. If
21 you can't follow the law, then you're not going to be a
22 good juror. Can you follow the law?

23 A. Yes.

24 Q. Okay. Then we need to -- the next thing I want
25 to ask you when we asked -- when you said -- well, we

STATE OF TEXAS VS. RUBEN GUTIERREZ

11

1 asked you, "Do you know any of the lawyers?" And you
2 said that you knew Mr. Blaylock. How do you know
3 Mr. Blaylock?

4 A. No. I did not say that, did I?

5 Q. Okay. It says --

6 A. Well, yes, well, just from here. I'm sorry.
7 Just from here.

8 Q. Okay. From when you saw him --

9 A. Yeah.

10 Q. -- talking on Tuesday?

11 A. Yeah.

12 Q. Mr. Reyes, the same way?

13 A. Yeah, the same way.

14 Q. All right. Now I need to ask you some very
15 specific questions about your feelings about the death
16 penalty, capital punishment. When we asked you the
17 question, "How do you feel about it?" You said, "I'm
18 neither generally opposed nor generally in favor of
19 capital punishment."

20 Tell me how you feel about the death
21 penalty.

22 A. Well, I really -- on the death penalty, I say
23 that -- I mean, I don't really -- I say that the death
24 penalty is for people that, you know, that are not
25 supposed to be in the streets, you know, that they do

STATE OF TEXAS VS. RUBEN GUTIERREZ

12

1 think they're going to commit the same thing over again.

2 Like sometimes like, you know, people that
3 do the same thing over again and keep on doing it, you
4 know, it's the people that I think that they deserve the
5 death penalty. They're a threat, you know.

6 Q. You tell me what type of crimes, then. People
7 who have killed before?

8 A. Yeah, people that kill and keep killing, you
9 know.

10 Q. Okay. What other types of people deserve the
11 death penalty?

12 A. Well, I'm going to say people that kill, you
13 know.

14 Q. Okay. Only people that kill?

15 A. Uh-huh.

16 Q. Okay. Now, the law in Texas is exactly like
17 how you feel. Only -- you can only get the death penalty
18 if you commit murder with something else. Like if you
19 commit murder on a child younger than six --

20 A. Uh-huh.

21 Q. -- the law says that you get the -- you can be
22 subject to the death penalty for that.

23 Or if you kill a police officer, the law
24 says that's more serious to kill a cop who's performing
25 his duties.

STATE OF TEXAS VS. RUBEN GUTIERREZ

13

1 The law also says if you're robbing
2 somebody and you kill them, you can get the death penalty
3 for that.

4 A. Uh-huh.

5 Q. How do you feel about that? Do you think
6 that's a good law?

7 A. Well, probably so because, I mean, maybe he
8 didn't have intentions, but if he had -- well, because if
9 the person went to, you know, steal something from
10 somebody, I mean, he knew that something might -- that
11 that could happen, you know. He could kill somebody. So
12 I think probably so, yeah.

13 Q. What if that person had never killed anyone
14 before? This was the first time that they did it. The
15 law says that they can receive the death penalty. Do you
16 think that's a good idea?

17 A. Well, sometimes I think that person like --
18 maybe he could just get life in prison, you know.

19 Q. But the law -- and this is something that you
20 and I need to talk about because it's very important.
21 The law says you can be a first time killer --

22 A. Uh-huh.

23 Q. -- and get the death penalty.

24 A. Yeah.

25 Q. Do you think that's a good idea?

STATE OF TEXAS VS. RUBEN GUTIERREZ

14

1 A. Well, I don't really know how to say it. Well,
2 I guess it all depends on how -- what the killing was or
3 how he did the killing.

4 Q. Okay. Yeah. And that's what -- and I'm going
5 to come up here and ask you about a couple of questions
6 because this is real important.

7 If -- in a particular case, what happens
8 is that you are not asked a question that says, "Do you
9 think this defendant should receive the death penalty?"

10 A. Uh-huh.

11 Q. Instead, you are asked some questions.

12 A. Uh-huh.

13 Q. And based on your answers to those questions,
14 like if you think the defendant's going to hurt again and
15 if you think that he actually intended the killing to
16 happen, then he can receive the death penalty.

17 A. Uh-huh.

18 Q. Okay? And so if you have some ideas that you
19 only think the death penalty should be for somebody who
20 has killed before --

21 A. Uh-huh.

22 Q. -- then you may not want to answer those
23 questions the way that you feel because you may not want
24 the person to receive the death penalty. Like you said a
25 minute ago, maybe they should get a life sentence

1 instead.

2 A. Uh-huh.

3 Q. Okay. So now, you tell me. If I told you the
4 law says that you can receive the death penalty for
5 killing someone while robbing them --

6 A. Uh-huh.

7 Q. -- and in your past you had never killed
8 anybody before, can you follow that law?

9 A. Well, I guess I can. Uh-huh. Because if
10 that's the law and -- I guess I can follow it.

11 Q. Okay. But if you can't, that's okay, too. I
12 mean, if you have -- you know, in here, if you have a
13 feeling that, "The only time I could give someone the
14 death penalty is if he had killed before," that's okay.
15 I mean, I'm not telling you that it's wrong to feel like
16 that.

17 A. Yeah. I understand.

18 Q. You know, it's okay. But it's kind of like --
19 and we use this example all the time with people who are
20 accused of breaking into houses. We have a lot of
21 burglaries here in Cameron County. You probably know
22 that. I mean, you probably know people who have had
23 their house getting broken in to.

24 A. Uh-huh.

25 Q. You know, usually when your house gets broken

STATE OF TEXAS VS. RUBEN GUTIERREZ

16

1 in to, you just -- I mean, it makes you very angry.

2 A. Yeah.

3 Q. And if you were here today and this was a
4 burglary of a habitation case, you would probably say, "I
5 don't care what happens. I'm going to find him guilty
6 because I just don't like people who break into houses."

7 A. Uh-huh.

8 Q. And see how sometimes because how you feel --

9 A. Yeah.

10 Q. -- about things, it may cause you to be unfair.

11 A. Uh-huh.

12 Q. Okay? And so that's what I need to know is if
13 your feeling about why people should get the death
14 penalty is so strong that you couldn't be fair in this
15 case.

16 A. Well, I think I could do my best, you know. I
17 think I could try to be very fair.

18 Q. Okay. And then when we ask you these
19 questions, we ask you if there is a probability that the
20 defendant would be a continuing threat to society,
21 basically would he hurt again --

22 A. Uh-huh.

23 Q. -- we're going to ask you that question. We're
24 going to -- during the punishment phase of the trial
25 we'll put on evidence and then we'll ask you, "Do you

STATE OF TEXAS VS. RUBEN GUTIERREZ

17

1 think he will hurt again?"

2 A. Uh-huh.

3 Q. What you have to do is you have to be able to
4 answer that question honestly. You have to say either,
5 "Yes," or "No, I don't think that he'll hurt again," or
6 "I do think that he'll hurt again."

7 A. Uh-huh.

8 Q. The thing is is that if you have a hidden
9 belief about what you think ought to happen, that may
10 change your answer to this question. Do you see what I'm
11 saying?

12 A. Yes, I understand what you're saying.

13 Q. Okay. So now, my question to you is can you
14 answer the question honestly knowing that if you answer
15 this question "yes," the defendant may receive the death
16 penalty?

17 A. Yes.

18 Q. Okay. Even though you may not think that
19 because he didn't kill two people, that's not going to
20 make you change your answer?

21 A. No, I don't think so.

22 Q. Okay. That's the same for all the questions,
23 then. That's what I just need to know is to make sure
24 that you can be fair and not have anything that's going
25 to not make it so that your feelings about how many times

STATE OF TEXAS VS. RUBEN GUTIERREZ

18

1 a person killed would change your answers. You're
2 telling me you can follow the law?

3 A. Yeah, I think so.

4 MS. FISCHER: I don't have any further
5 questions, Judge.

6 MR. REYES: May I proceed, Your Honor?

7 THE COURT: You may.

8 VOIR DIRE EXAMINATION

9 BY MR. REYES:

10 Q. Good morning, Ms. Anaya.

11 A. Good morning.

12 Q. How are you doing?

13 A. Okay.

14 Q. I'm going to go ahead and be asking you some
15 more questions about your questionnaire --

16 A. Uh-huh.

17 Q. -- and also some other principles of law that
18 we talked about last week and just to get an individual
19 answer from you and go into more detail from your
20 questionnaire.

21 A. Uh-huh.

22 Q. If you don't understand one of my questions,
23 just let me know and I'll go ahead and rephrase it.

24 A. Okay.

25 Q. On your questionnaire you had marked that you

1 knew Mr. Blaylock and myself; and that was just from us
2 having spoken to you --

3 A. Yes.

4 Q. -- last week?

5 A. Uh-huh.

6 Q. And you didn't recognize any names of the
7 witnesses that were called that were listed last week?

8 A. No.

9 Q. What about -- let me go ahead and list four
10 additional names; and then let me know if you know or
11 recognize any of those names.

12 A. Okay.

13 Q. Roberto Gonzalez from Brownsville; Tina Hauff
14 from Brownsville; Claudia Leyva who works for the
15 Brownsville Police Department; and Tino Ortiz.

16 A. No.

17 Q. Okay. If it did turn out that you recognized
18 anybody, would you be able to listen to their testimony
19 and judge them just as you would judge any other witness?

20 A. Yes, sir.

21 Q. And the fact that you knew them, would that
22 affect you in any way?

23 A. No.

24 Q. We talked to you last week about the
25 indictment. And remember that I told you that an

STATE OF TEXAS VS. RUBEN GUTIERREZ

20

1 indictment is simply the means whereby a person who's
2 charged with a felony crime in this State is brought to
3 court? Do you recall that?

4 A. Yes.

5 Q. And I told you that that indictment is
6 absolutely no evidence of a person's guilt, and that all
7 it serves is to let the State know what it is that it
8 must prove to you beyond a reasonable doubt, and it also
9 tells the person that's charged what it is exactly that
10 they're being charged with.

11 A. Uh-huh.

12 Q. Did you understand that?

13 A. Yes, sir.

14 Q. Are those principles that you agree with?

15 A. Uh-huh.

16 Q. Do you agree with that?

17 A. Yes.

18 Q. And would you be able to follow the
19 instructions of the Court if the Judge were to instruct
20 you that that is the law in this State?

21 A. Yes.

22 Q. You would be able to follow it?

23 A. (Nods head).

24 Q. We talked about the presumption of innocence.
25 Remember that I told you that every person who's charged

STATE OF TEXAS VS. RUBEN GUTIERREZ

21

1 with a crime in this State or anywhere in the United
2 States is presumed to be innocent until the very end; and
3 then it can only be overcome if the State presents enough
4 evidence to the jury to -- for them to come back with a
5 verdict of guilty. Do you recall that?

6 A. Uh-huh.

7 Q. And do you agree with that law?

8 A. Yeah.

9 Q. Okay. Everybody is presumed innocent --

10 A. Until found guilty. Yeah.

11 Q. Okay. And you agree with that?

12 A. Uh-huh.

13 Q. And if the Judge were to instruct you that that
14 is the law, would you be able to follow it?

15 A. Yes.

16 Q. Now, the State of Texas has the burden of
17 proof, and it stays with them from start to finish. It
18 never shifts to us. Remember that we don't have to
19 present any evidence whatsoever.

20 A. Uh-huh.

21 Q. And we don't have to, you know, present any
22 witnesses or anything like that. Mr. Gutierrez doesn't
23 have to testify. Do you remember that?

24 A. Yes.

25 Q. Are those things that you agree with?

1 A. I guess so. If that's the way it is, yes.

2 Q. Okay. Well, do you understand how we would
3 need a more definite answer from you, a yes or a no?

4 A. Oh, okay.

5 Q. Okay. Are those --

6 A. Yes, I think so. I mean, sorry. Yes.

7 Q. And would you be able to follow those
8 instructions of the Court?

9 A. Yes.

10 Q. Now, we talked to you about the definition of
11 beyond a reasonable doubt. It's right in front of you.
12 Can you see it?

13 A. Uh-huh.

14 Q. It says, "A reasonable doubt is a doubt based
15 on reason and common sense after a careful and impartial
16 consideration of all the evidence in the case. It is the
17 kind of doubt that would make a reasonable person
18 hesitate to act in the most important of his own
19 affairs."

20 All it's asking you is for you to use your
21 reason and your common sense and carefully and
22 impartially consider all the evidence.

23 A. Uh-huh.

24 Q. Can you do that?

25 A. Yes.

1 Q. The second part it's saying, "Reasonable doubt
2 therefore must be proof of such a convincing character
3 that you would be willing to rely and act upon it without
4 hesitation in the most important of your own affairs."

5 For example, would you agree with me that
6 the purchase of a home or a house is something that's
7 very important in a person's life?

8 A. Uh-huh.

9 Q. So you would take a lot of careful thought,
10 consideration before you decided to buy a house, wouldn't
11 you?

12 A. Yes, sir.

13 Q. It's simply asking you to go ahead and take
14 that reasoning, all that care and consideration that you
15 would give in the purchase of a home, something that's
16 very important in your own life, and bring it in and
17 apply it to this case. Can you do that?

18 A. Yes.

19 Q. Okay. And the first part is asked -- is
20 telling you that the proof -- that the evidence that is
21 presented to you must be of such a convincing character
22 that you must be willing to rely and also act upon it
23 without hesitation. Can you do that?

24 A. Yes.

25 Q. Okay. And if you were to be selected as a

1 juror, would you be able to apply this definition to the
2 evidence that is presented to you in making a decision?

3 A. Yes.

4 Q. We talked about also what are called the
5 elements. Do you remember I told you that every crime is
6 made up of what are called elements; and those are the
7 things that the State of Texas has to prove to you with
8 evidence beyond a reasonable doubt? Do you remember
9 that?

10 A. Uh-huh.

11 Q. And I pointed that there was six of them. I
12 don't know if you recall it, but if you don't, they're
13 right here. They're right to my left.

14 Remember that I told you that the
15 elements, the first one, was Ruben Gutierrez, the
16 defendant.

17 A. Uh-huh.

18 Q. Element number two, that it occurred on or
19 about September the 5th of 1998.

20 A. Yes.

21 Q. And element number three, Cameron County; four,
22 intentionally; five, the manner and means; and number
23 six, the said defendant was then and there in the course
24 of committing or attempting to commit the offense of
25 robbery. Do you see that?

STATE OF TEXAS VS. RUBEN GUTIERREZ

25

1 A. Uh-huh.

2 Q. And do you remember that I told you that each
3 one of these elements has to be proven to you with
4 evidence beyond a reasonable doubt?

5 A. Yes.

6 Q. And do you remember that, for example, number
7 one, the State of Texas has to bring enough evidence,
8 either witnesses, documents, whatever, to prove to you
9 and to convince you beyond a reasonable doubt and prove
10 element number one, that it was Ruben Gutierrez, the
11 defendant?

12 A. Uh-huh.

13 Q. And also that it happened on or about September
14 the 5th of 1998. Do you see that?

15 A. Yes.

16 Q. And do you remember that I told you that if
17 they failed to prove even one of those elements, you must
18 say not guilty by your verdict?

19 A. Yes.

20 Q. Do you remember that?

21 A. Uh-huh. I remember.

22 Q. Let's say, for example, they -- in number six,
23 do you see how it says, "In the course of committing or
24 attempting to commit robbery"? Do you see that?

25 A. Yes.

1 Q. Okay. And let's say, for example, that they
2 introduced evidence maybe through witnesses that proved
3 up a burglary of a habitation, a burglary of a house.

4 A. Uh-huh.

5 Q. Do you see how burglary of a house is different
6 from a robbery? There's two different --

7 A. Yeah, because --

8 Q. -- they're two different crimes?

9 A. Uh-huh.

10 Q. Do you understand that?

11 A. Yeah, because in the house, that means they get
12 into the house, right, and --

13 Q. Exactly.

14 A. -- the other is outside the house.

15 Q. Okay. Let's say, for example, that they prove
16 to you beyond a reasonable doubt that there was a
17 burglary of a house and not a robbery, do you see how
18 they failed to prove element number six because they
19 didn't prove robbery, they proved something else?

20 A. Uh-huh.

21 Q. Do you understand that?

22 A. Yes.

23 Q. Okay. So based on what we talked about
24 earlier, because they failed to prove element number six,
25 they've only proved five, if the Judge were then to ask

1 you, "How do you vote, guilty or not guilty?" What would
2 your verdict have to be?

3 A. Not guilty.

4 Q. And do you understand why?

5 A. Yes, because they didn't prove the six
6 elements.

7 Q. Okay. And is that something that you agree
8 with? Since the State --

9 A. Yeah.

10 Q. Since the State brought the charges, they have
11 to prove them to you?

12 A. Yeah, I understand that.

13 Q. And if they don't prove them to you, you can't
14 just give them the case?

15 A. Yes.

16 Q. I know it's one element out of six, but still
17 the law says that that's enough.

18 A. Uh-huh.

19 Q. Okay? Would you agree with that?

20 A. Yes.

21 Q. And if the Judge were to instruct you that that
22 is the law, would you be able to follow it?

23 A. Yes.

24 Q. In Texas we also have what's called a
25 bifurcated trial system. And I told you on Tuesday of

1 last week that it's a two-part trial system; the
2 guilt/innocence phase and the punishment phase.

3 And obviously if you find somebody not
4 guilty, then you don't even go to the second part. If
5 you find somebody guilty, then you go to the second part.

6 We talked about lesser included offenses
7 also, remember that?

8 A. Uh-huh.

9 Q. Where it's capital murder, from -- lesser
10 crimes from that are murder and then also robbery. Do
11 you remember those?

12 A. (Nods head).

13 Q. And the question is in a hypothetical case if
14 you were to find somebody guilty of murder, the range of
15 punishment in that -- for murder is five years in prison
16 up to 99 years or life. Would you be able to consider
17 the full range of punishment and then make a decision?

18 I'm not asking what number of years you
19 would give because you don't know anything about any of
20 the facts, but just if you could keep an open mind as to
21 the whole number of years, consider five, consider 99 or
22 life in prison, anything in between, and then make a
23 decision based on what's presented to you.

24 A. I think so.

25 Q. Do you see how we would need a definite answer,

1 if you would --

2 A. Yes.

3 Q. -- or not?

4 A. Yes, sir.

5 Q. Okay. I don't mean to badger you on that, but,
6 you know, we do need definite answers because if you're
7 seated as a juror, we need to know exactly what it is
8 that you're --

9 A. Okay. Yes.

10 Q. For robbery, the range of punishment in this
11 State is two years in prison up to 20 years. And all I'm
12 asking is whether you really -- you would be able to look
13 at the full range of punishment, two years, 20 years or
14 everything in between, and then make a decision based on
15 the evidence that's presented to you.

16 A. Yes.

17 Q. If you find somebody guilty of capital murder,
18 then that's when you would go ahead and come to those
19 special issues --

20 A. Uh-huh.

21 Q. -- and only in that circumstance, okay?

22 A. Yes.

23 Q. Basically Special Issue Number 1 is asking you,
24 "Is there a probability that the defendant would commit
25 criminal acts of violence that would constitute a

STATE OF TEXAS VS. RUBEN GUTIERREZ

30

1 continuing threat to society?"

2 And then Special Issue Number 2, "Do you
3 find from the evidence beyond a reasonable doubt that the
4 defendant either himself actually caused the death of the
5 victim; if he didn't, did he intend to kill the person;
6 if he didn't, did he anticipate that a human life would
7 be taken?"

8 Do you understand? And I'll go over them
9 in a little bit, but do you understand basically what
10 it's asking you?

11 A. Yes.

12 Q. Now, the State of Texas still has its burden of
13 proof. They have to prove Number 1 and Number 2 to you
14 beyond a reasonable doubt.

15 A. Yes.

16 Q. Do you understand?

17 A. I understand.

18 Q. And would you be willing to hold the State to
19 their burden with respect to those two special issues; in
20 other words, require that they prove those two to you
21 beyond a reasonable doubt?

22 A. Yes.

23 Q. Now, Special Issue Number 2 is asking, "Is
24 there a probability." In other words, is it more likely
25 than not, would you agree with me? Is it more likely

1 than not that the defendant would commit criminal acts of
2 violence; and, therefore, he would be a continuing threat
3 to society. Would you agree with me?

4 A. Could you answer -- ask the question again?

5 Q. It's asking you -- when you look at the word
6 "probability" --

7 A. Uh-huh.

8 Q. -- would you agree with me, Ms. Anaya, that
9 that actually means more likely than not?

10 A. Oh, yes.

11 Q. Right?

12 A. Uh-huh.

13 Q. Okay. And it's asking you to kind of look into
14 the future and make a prediction, right?

15 A. Yes.

16 Q. Because you don't know what's going to happen
17 or not --

18 A. Yes.

19 Q. -- is that correct?

20 A. That's true.

21 Q. None of us can look into the future and then
22 see what's going to happen --

23 A. No.

24 Q. -- is that correct?

25 A. Uh-huh.

1 Q. It's just kind of asking you to go ahead and
2 make a guess as to what's going to happen in the future
3 or what might not happen. Do you see that?

4 A. Yes, I see that.

5 Q. And do you see how it's basically asking you to
6 punish an individual in this case for something that
7 might not even happen in the future? Because it's asking
8 you to answer the question --

9 A. Yes.

10 Q. -- for this case based on something that might
11 not even happen in the future. Do you see that?

12 A. Yeah, I have to consider that, too, that if he
13 was a threat or not and --

14 Q. So you would look into everything and then make
15 a decision?

16 A. Yes, I think so. Yes.

17 Q. And it's also -- do you see how it's limiting
18 to what you can look at, where it says, "Criminal acts of
19 violence"? Do you see that? Whether he would commit
20 other criminal acts of violence.

21 A. Yes.

22 Q. Okay. Do you see how it's limiting you to
23 those acts only? Do you see that?

24 A. Yes.

25 Q. Okay. So do you see how the only thing that is

1 relevant to this special issue would be whether or not he
2 would commit other acts of violence; for example, maybe
3 an assault on a person, maybe a murder or something like
4 that? But, for example, burglary of a house or burglary
5 of a vehicle, those aren't criminal acts of violence.
6 They're not violence on a person.

7 A. Yeah, I know.

8 Q. They're more against property. Do you see the
9 difference there?

10 A. Yes.

11 Q. Now, Number 2, it's asking you to look at all
12 the facts and all the evidence that's presented to you,
13 and based on that can you tell beyond a reasonable doubt
14 whether that individual actually caused the death of the
15 victim. Do you see that?

16 A. Uh-huh.

17 Q. Where actually -- for example, I go -- I go
18 into a Circle K. I turn to the victim and I kill him and
19 then I run out with the money. Do you see where in that
20 situation I killed him myself?

21 A. Yes.

22 Q. So based on that scenario, you'd be able to
23 answer "yes" to Question Number 2? Are you with me?

24 A. Yeah. With the facts presented, you want to
25 know if I could be able to answer --

1 Q. Based on what's presented to you.

2 A. Yeah, I think so. Yes.

3 Q. Okay. And do you see how that question is
4 asking you whether or not that person actually killed the
5 victim?

6 A. Yes.

7 Q. Okay. So in that example that I gave you where
8 I go -- where I go and I actually shoot the individual
9 myself, do you see how in that example you can answer
10 "yes" because I actually killed that person?

11 A. Yes.

12 Q. Do you follow me?

13 A. Uh-huh.

14 Q. Okay. And it's asking you if he didn't -- if I
15 didn't actually kill the person, then did the person
16 intend to kill somebody else or that victim. Do you see
17 the difference?

18 A. Uh-huh.

19 Q. And let me give you another example. Let's say
20 Mr. Galarza and I go to a Circle K, okay? I have a gun.
21 I intend to kill somebody. I have it in my mind that if
22 somebody crosses me, I'm going to turn around and shoot
23 them.

24 I never tell him that I have a gun. I
25 never tell him what it is that I'm thinking. All we're

1 going to do is we're going to go in there. We make a
2 plan that one of us is going to distract the clerk, and
3 the other one is going to go ahead and grab the
4 cigarettes and run out. That's all he knows, okay?

5 A. Uh-huh.

6 Q. Do you see how in that scenario there's no way
7 that he could have intended or anticipated that a human
8 life would be taken because in his mind all we're going
9 to do is run in there, take cigarettes, and then run out?
10 Do you follow me?

11 A. Uh-huh.

12 Q. Okay. And do you think that you'd be able
13 to -- if the Court was to instruct you that that is the
14 law, would you be able to follow it? In other words,
15 look at all the evidence that's presented and then decide
16 whether or not how you're going to answer that question.
17 Did you understand?

18 A. Yeah, I understand what you're asking me.
19 Yeah, about the other person, that if he knew or not,
20 right?

21 Q. I'm sorry?

22 A. Like he didn't know that all this was going to
23 happen.

24 Q. And that's basically where it goes to the law
25 of parties. Because let's say, for example, two people

1 go into a Circle K. One kills another person. That
2 doesn't automatically mean the other person is guilty of
3 murder because I shoot that person. They're required to
4 prove more than me just having gone in there. You might
5 find the other person guilty of robbery, but not
6 necessarily of the murder. Do you see that?

7 A. Yes.

8 Q. Okay. Do you see where that is requiring that
9 they prove more than Mr. Galarza just having gone in
10 there with me to the store to rob?

11 A. Yes, I see that.

12 Q. Okay. I mean, you can find him guilty of
13 robbery maybe, going in there and stealing something or
14 theft, but not necessarily the murder unless they prove
15 that he actually killed the person, the clerk --

16 A. Uh-huh.

17 Q. -- unless they proved that he intended to kill
18 the person, or unless they prove that he anticipated that
19 the clerk would be killed. Do you see that?

20 A. Uh-huh.

21 Q. Do you follow me?

22 A. Yes.

23 Q. Okay. And could you follow that instruction
24 and then make a decision as to --

25 A. Yes, I think so. I mean, yes, because I think

1 I would look at all the evidence and then decide.

2 Q. And then make a decision?

3 A. Yes.

4 Q. And do you understand how they're required to
5 prove more than he and I just going in there, one of us
6 kills, and then we're both guilty of murder?

7 A. Yes.

8 Q. You have to take it one step further and then
9 look at all those things..

10 A. Uh-huh.

11 Q. Would you be able to do that?

12 A. I think, yeah.

13 Q. Yes?

14 A. Uh-huh.

15 Q. Special Issue Number 3, it's asking you to take
16 into consideration all the evidence, the circumstances of
17 the offense, the defendant's character and background,
18 and the personal moral culpability of the defendant,
19 okay, and then decide whether or not that's sufficient --
20 any of those things, is it sufficient evidence to give
21 them a life sentence and not the death sentence. Do you
22 understand that?

23 A. Uh-huh.

24 Q. If you answer "yes" to 1 and 2, the death
25 penalty would be assessed. So you go to Number 3 to find

1 out whether or not there's anything that's there that
2 would give them a life sentence rather than the death
3 penalty. Do you see that?

4 A. Yes.

5 Q. Do you follow me?

6 A. Uh-huh.

7 Q. And basically it's asking you to look at all
8 the evidence that's presented, how it is that the crime
9 was committed, his character, his background; for
10 example, you know, whether he went to school, whether
11 he's a dropout, if he had psychological problems or
12 not --

13 A. Uh-huh.

14 Q. -- that he came from a broken home, was he from
15 a poor family, a rich family. All those things, do you
16 see how they go to Number 3, his character and his
17 background?

18 A. His character, yeah, and background.

19 Q. And then the personal moral culpability of the
20 defendant, whether or not he's shown remorse, accepted
21 responsibility, things like that. Do you see?

22 A. Uh-huh.

23 Q. Could you take all those things into
24 consideration as you're being asked right here and then
25 make a decision?

1 A. Yes.

2 Q. You would be able to do that? And do you see
3 how it's asking you right there whether there's a
4 sufficient mitigating circumstance or circumstances? Do
5 you see that?

6 A. Uh-huh.

7 Q. Okay. So what it's basically asking you is
8 whether there is one reason that's sufficient to you to
9 mitigate his punishment from the death penalty to life
10 imprisonment. Do you see that?

11 A. Uh-huh.

12 Q. So it's not asking you that you have to have
13 more -- or it's not telling you that you have to have
14 more than one reason. One reason, if it's sufficient or
15 mitigating -- if it's a sufficient mitigating
16 circumstance or reason, that's enough for you to be able
17 to answer "yes" to this question. Do you see that?

18 A. Yes.

19 Q. Okay. And do you agree with that?

20 A. Yes.

21 Q. Would you be able to follow that instruction?

22 A. Yes.

23 Q. In Texas we also have -- I'm sorry. Every
24 person who is accused of a crime has a right to remain
25 silent; and they don't have to talk to the police. They

1 don't have to present evidence in court or they don't
2 have to go ahead and testify at their own trial.

3 A. Uh-huh.

4 Q. Do you agree with those? Those are
5 constitutional rights that every individual is given in
6 this country when they're charged with a crime.

7 A. Yes.

8 Q. Okay. And if the Judge were to instruct you
9 that that is the law in this State, would you be able to
10 follow that law?

11 A. Yes.

12 Q. Also in this State they have -- we have what's
13 called a spousal privilege where the spouse, either the
14 husband or the wife, cannot be forced to come and testify
15 in court whether or not they know anything about the
16 crime. Do you understand that?

17 A. Yes.

18 Q. And would you hold it against the State or
19 Mr. Gutierrez in this case if the spouse did not come and
20 testify or would you be able to follow that instruction?

21 A. I think I would be able to follow the
22 instruction.

23 Q. Do you think you would be able to or would you
24 be able to definitely follow that instruction?

25 A. Definitely I would follow the instruction, yes.

STATE OF TEXAS VS. RUBEN GUTIERREZ

41

1 Q. In Texas, also, sometimes the State -- the
2 police take statements that are allegedly made by the
3 person who's on trial. And they usually call them
4 statements of accused or confessions. Do you see where
5 that could happen?

6 A. Could you repeat that again?

7 Q. Yes. Where they arrest somebody or they bring
8 you in for questioning and they take a statement from
9 you --

10 A. Yes.

11 Q. -- and they call them confessions or statements
12 of accused.

13 A. Uh-huh.

14 Q. And my question is just whether you'd be able
15 to take all the circumstances surrounding the taking of
16 that statement; for example, if they read him his rights
17 or not, if that person actually said, "I want an
18 attorney," and they never provided one to him --

19 A. Uh-huh.

20 Q. -- if that person maybe was threatened, if they
21 threatened maybe his mother or his father if he didn't
22 talk to them? Do you see --

23 A. Yes.

24 Q. -- how that statement in those situations might
25 not be given voluntarily? Do you see that?

STATE OF TEXAS VS. RUBEN GUTIERREZ

42

1 A. Yes, I see that.

2 Q. And my question to you, Ms. Anaya, is whether
3 you would be able to take that into consideration in
4 deciding whether or not that statement was given
5 voluntarily, look at those things, and then decide,
6 "Well, was it given voluntarily or not?"

7 A. The statement you mean?

8 Q. Yes, the statement.

9 A. Yeah, I think I could -- yes, I would like at
10 that.

11 Q. Okay. And if you in your mind and the Judge
12 were to instruct you that if that statement was not given
13 voluntarily, that you must set it aside and not consider
14 it as any evidence whatsoever, could you do that?

15 A. Yes.

16 Q. Now, in Texas in situations where there's more
17 than one person who's charged with a crime, there's like
18 maybe two or three or more, they're called co-defendants.
19 Do you understand?

20 A. Yes.

21 Q. And in those situations if a person -- if one
22 of those defendants is on trial, they might -- the State
23 of Texas might make a deal with one of the other persons,
24 one of the other defendants for them to come and testify.

25 Now, in exchange for their testimony, they

STATE OF TEXAS VS. RUBEN GUTIERREZ

43

1 might get a lesser sentence, they might get probation, or
2 their cases in some situations might be dismissed. Do
3 you see where that could happen?

4 A. Yes.

5 Q. For example, if an individual is facing maybe
6 life in prison or 99 years in prison and they get maybe
7 20 or ten years or 15 years in exchange for their
8 testimony in court, do you see how that person would have
9 a motive, a reason to come testify in court, meaning he
10 wants his ten, 20 years?

11 A. Yes.

12 Q. Okay. Because he doesn't want to risk getting
13 99 years or life in prison.

14 A. Yes.

15 Q. Okay? So he would have a reason to come and
16 testify, would you agree?

17 A. Yes.

18 Q. Okay. And would you agree with me that that
19 individual might not completely tell the truth because he
20 wants to go ahead and keep his deal with the State? So
21 he might want to go ahead and say what it is that they
22 want to hear and not necessarily the truth. Do you see
23 where that might happen?

24 A. Yes, I know that might happen, too.

25 Q. Okay. So would you be willing to take into

1 consideration that fact in making a decision as to
2 whether or not to believe that codefendant? In other
3 words, listen to them, you know, see whether or not they
4 have a deal with them, watch how it is that their -- what
5 their demeanor is, what they're saying, and then make a
6 decision as to whether or not to believe them. That is
7 all we're asking.

8 A. Yes.

9 Q. Can you do that?

10 A. (Nods head).

11 Q. I know that you work at the Valley Baptist
12 Medical Center; is that correct?

13 A. Yes.

14 Q. So you work with doctors, maybe nurses?

15 A. No. I work as a housekeeper, but I do run into
16 them, you know.

17 Q. Okay. Do you understand that if you were to be
18 selected as a juror in this case, you would have to sit
19 in the jury box, listen to all the witnesses --

20 A. Yes.

21 Q. -- and then decide whether or not to believe
22 them?

23 A. Yes.

24 Q. Okay. Now, would you agree with me that police
25 officers sometimes may make mistakes?

1 A. Yes.

2 Q. Okay. And because they make mistakes, they
3 want to go ahead and cover those mistakes up. So when
4 they come to court, they might not be willing to tell the
5 whole truth. Do you see where that could happen?

6 A. Yes.

7 Q. Okay. Or even if they don't make a mistake,
8 they may not be willing to tell the whole truth. Even
9 though they're wearing a badge, that doesn't necessarily
10 mean that they're telling the truth 100 percent of the
11 time?

12 A. Yeah, I know that.

13 Q. Do you believe that?

14 A. Yes.

15 Q. So would you be willing to listen to that
16 police officer, and after you listened to his testimony,
17 how it is that he's behaving in court, would you be
18 willing to listen and then make a decision as to whether
19 or not to believe him?

20 A. Yes.

21 Q. Okay. The same thing with doctors or nurses.
22 Just because maybe you see them and you work with them,
23 would you be willing to keep an open mind, listen to
24 them, and not automatically believe everything they're
25 saying? Would you be willing to do that?

1 A. Like you mean like when --

2 Q. Let's say a doctor would come testify --

3 A. Uh-huh.

4 Q. -- and you're sitting as a juror, would you
5 automatically believe them or would you want to listen to
6 them --

7 A. Well, I would listen and consider what he said.

8 Q. Okay. Because the same thing with doctors,
9 they might have made a mistake and they might be wanting
10 to cover it up. Anything could happen. Would you agree
11 with me?

12 A. Yeah. Anybody could want to cover up a
13 mistake, yes.

14 Q. Okay. So, the same thing, would you listen to
15 them and then decide whether or not to believe them?

16 A. Yes.

17 Q. And you don't have any -- do you have any
18 relatives in law enforcement?

19 A. I have cousins in Houston, they're police
20 officers.

21 Q. Would the fact that they're police officers and
22 they're relatives of you -- of yours, would that affect
23 you in any way?

24 A. No.

25 Q. You wouldn't feel compelled to say "guilty"

STATE OF TEXAS VS. RUBEN GUTIERREZ

47

1 because you have relatives that are police officers?

2 A. No.

3 Q. Would you be able to make a decision just based
4 on the facts and the evidence that are presented to you?

5 A. Yes.

6 Q. And you yourself have not been a victim of any
7 crime; is that correct?

8 A. No.

9 Q. Just your relatives that have been arrested for
10 D.W.I.?

11 A. Yes.

12 Q. And have you heard anything about this case in
13 the media?

14 A. No.

15 Q. Through friends, talking about it or anything
16 like that?

17 A. No.

18 Q. So have you formed an opinion as to the guilt
19 or innocence of Mr. Gutierrez?

20 A. No.

21 Q. Would you be willing to keep an open mind until
22 all the evidence has been presented to you?

23 A. Yes.

24 Q. Let me just look through your questionnaire and
25 see if I have any other questions.

1 It says that you were interested in the
2 outcome of a criminal case in question number 26. Which
3 case in particular?

4 A. Well, not really any particular case, but like,
5 you know, like somebody -- like sometimes you find, you
6 know, people that -- friends or maybe family members that
7 could be like that, in trouble; and then you would want
8 to find out, you know, what was the outcome of it. But I
9 don't have anything in particular right now --

10 Q. So --

11 A. -- a case in particular.

12 Q. Nothing that would affect you in this case?

13 A. No.

14 Q. You have, in fact, served on a civil jury; is
15 that correct?

16 A. Yes.

17 Q. Anything in that jury service that would lead
18 you not to want to be a juror in this case?

19 A. No.

20 Q. Sometimes people have bad experiences and they
21 swear they never want to be on a jury after that.
22 Nothing like that?

23 A. No.

24 MR. REYES: I'll pass the witness, Your
25 Honor. Nothing further.

STATE OF TEXAS VS. RUBEN GUTIERREZ

49

1 THE COURT: All right. Ms. Anaya, let me
2 ask you to step down for a few minutes. I need to take
3 up a legal matter with the lawyers, and then I'll bring
4 you back in.

5 MS. ANAYA: Okay.

6 THE COURT: Step outside, please.

7 (Prospective juror left the courtroom)

8 THE COURT: Is this juror acceptable to
9 the State?

10 MS. FISCHER: The State would exercise a
11 peremptory strike at this time, Your Honor.

12 THE COURT: Bring her in.

13 Ms. Anaya, that's all the questions we
14 have for you today. You're excused to go. Thank you
15 very much.

16 MS. ANAYA: Okay. I was wondering, could
17 I get an excuse for my job?

18 THE COURT: Yes.

19 THE BAILIFF: At the District Clerk's
20 Office. I will advise her.

21 THE COURT: He'll tell you where to go.

22 MS. ANAYA: Thank you.

23 THE COURT: Bring in Ms. Caldera.

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: Good morning, Ms. Caldera.

STATE OF TEXAS VS. RUBEN GUTIERREZ

50

1 MS. CALDERA: Good morning.

2 THE COURT: How are you?

3 MS. CALDERA: Pretty good, thank you.

4 THE COURT: Okay. I think the lawyers
5 have a few more questions to ask you. And if you would
6 do me a favor, just talk into the microphone so everybody
7 can hear you. Thank you.

8 MS. CALDERA: Okay.

9 MR. BLAYLOCK: May I proceed, Judge?

10 THE COURT: You may.

11 MR. BLAYLOCK: Thank you, Judge.

12 **LYDIA CALDERA,**

13 having been called as a prospective juror and, upon
14 her oath, was examined and testified as follows:

15 **VOIR DIRE EXAMINATION**

16 **BY MR. BLAYLOCK:**

17 Q. Good morning, Ms. Caldera.

18 A. Good morning.

19 Q. And how are you this morning?

20 A. Fine, thank you.

21 Q. All right. You can tell by now we're running a
22 little bit late, right?

23 A. I know. I thought I was lost.

24 Q. You came in a while ago, right?

25 A. Yes.

1 Q. How does it feel to know that we're running a
2 little bit late? How does that make you feel?

3 A. Well, I guess you all are real busy, you know.

4 Q. We try hard.

5 A. Trying to figure out everything.

6 Q. Now, ma'am, you say you don't have any feelings
7 towards defense attorneys or prosecutors in your
8 questionnaire. And you filled this questionnaire out
9 last -- not last Tuesday but the Tuesday before --

10 A. Yes.

11 Q. -- correct? Or was it --

12 A. No. It was last Tuesday.

13 Q. Yeah. One week from tomorrow. How do you feel
14 about defense attorneys and prosecutors? I notice you
15 didn't put anything down for us. Do you have any
16 feelings about that at all?

17 A. No. I don't --

18 Q. How would you say -- what would you say my job
19 is as the prosecutor?

20 A. Your job?

21 Q. Uh-huh.

22 A. Well, your job is to find the -- you know, all
23 the reasons and everything, you know, to find out if
24 it's, you know, the right thing to do or not, you know,
25 what you're going to do.

1 Q. Right. If he did it --

2 A. What is it going to -- you know, going to be
3 done.

4 Q. Would you say my job is to seek justice?

5 A. Yes.

6 Q. What would you say the defense attorney's job
7 is?

8 A. Well, I guess it's -- he's trying to see, you
9 know, the other side, too.

10 Q. Okay. Let me ask you this, ma'am. This is the
11 hard question. How do you feel about the death penalty?

12 A. Well, that's the thing, you know, that I feel,
13 you know, they should be -- but then I feel bad, you
14 know, for the death, you know, because I think that's
15 God's -- you know, the one that's got to do that, you
16 know. But like I say, I mean, everybody deserves what
17 they do, too. So there's two ways, you know, to look on
18 it, you know.

19 Q. Yeah. There's definitely at least two ways to
20 look at it, right?

21 A. Uh-huh.

22 Q. But because you feel -- I mean, this is your
23 opinion. I'm not trying to talk you out of it.

24 A. Yes.

25 Q. In fact, in many ways I agree with it, that

STATE OF TEXAS VS. RUBEN GUTIERREZ

53

1 it's God's job to sort this out.

2 A. Yes.

3 Q. Because you feel that way, would it keep you
4 from being a fair juror on this kind of case?

5 A. Well, I don't know. I would have to go through
6 all the --

7 Q. The evidence?

8 A. I think so.

9 Q. And after -- let's say hypothetically after you
10 saw all the evidence, you were satisfied beyond a
11 reasonable doubt that the person did it, whatever we said
12 he did, he did it, he killed a person in the commission
13 of a robbery, you're satisfied that he did that, now
14 would you -- because of your feelings, would you want him
15 to get the death penalty?

16 THE COURT: Would you consider it?

17 MR. BLAYLOCK: Yes, sir.

18 Q. (BY MR. BLAYLOCK) Would you -- I mean,
19 because of your feelings, you know, you think that's
20 God's job, would you consider that?

21 A. I wouldn't like to do it myself, you know.
22 Anybody else can do it, but I think me --

23 Q. Okay. So, you don't want to --

24 A. That's one thing, you know.

25 Q. Do you want to be a juror in this kind of case?

1 A. Well, I would be a juror. I don't say no --

2 Q. Okay.

3 A. -- but -- you know.

4 Q. What I'm asking you is would you --

5 A. That's the thing.

6 Q. -- would you want to be a juror in this kind of
7 case?

8 A. Not for the death penalty.

9 Q. No?

10 A. Not for the death penalty.

11 Q. And because of your feelings about that -- I
12 mean, really, we're just trying to get a fair trial for
13 everybody involved. Do you think you would be a fair
14 juror for this kind of case, for a death penalty?

15 A. I would be fair. I mean, I'm straight, you
16 know, but that's just the only thing, you know.

17 Q. All right. So, if you were selected, you would
18 sit on this kind of case and if it came down to it,
19 knowing that the death penalty would be assessed, you
20 would still be true and fair?

21 A. I guess so. I should.

22 Q. Okay. And if it came down to assessing the
23 death penalty, could you do that?

24 A. I guess so.

25 Q. Okay. I'm going to ask you some questions

1 about some of the answers you made on your questionnaire.
2 You said that -- and this is your opinion. So there's no
3 wrong answers here, all right?

4 A. Uh-huh.

5 Q. That you would hold the State to a higher
6 standard in a capital murder case. Tell me why you would
7 do that.

8 A. Well, since there's so much, you know -- and so
9 many crimes and killings and all that --

10 Q. Uh-huh.

11 A. -- so that's why I think that it -- we should,
12 you know, do the right thing, you know, try to work, you
13 know, with all these together. In other words --

14 Q. I think I understand what you're saying. But
15 what I'm asking you is why would you want the State to
16 have a higher burden than in a usual kind of case? You
17 say that you would hold the State to a higher standard in
18 a capital murder kind of case as opposed to another kind
19 of case. Just tell me why you think that we would have a
20 higher burden.

21 A. Well, to get rid of all these crimes.

22 Q. Okay. So I think you're saying that it's more
23 important, that this kind of case is more important than
24 others --

25 A. It is.

STATE OF TEXAS VS. RUBEN GUTIERREZ

56

1 Q. -- because it can get rid of these kinds of
2 crimes?

3 A. Uh-huh.

4 Q. All right. Now, do you understand that we have
5 to prove this to you as a juror beyond a reasonable
6 doubt? That's the kind of doubt based on your reason and
7 your common sense.

8 A. Yes.

9 Q. Remember I talked to you about that last
10 Tuesday?

11 A. Uh-huh.

12 Q. Okay. Now, would you want -- would you want me
13 to prove it beyond a shadow of a doubt in a capital case?

14 A. Well, I think so in the court I think they
15 should prove it, you know, prove -- have the proofs.

16 Q. Sure. You should have the proof beyond a
17 reasonable doubt or beyond all doubt?

18 A. I guess beyond all doubt.

19 Q. Beyond all doubt?

20 A. Yes.

21 Q. Okay. And would you agree that beyond all
22 doubt is higher than beyond a reasonable doubt, right?

23 A. Uh-huh.

24 Q. Okay. You agree with that?

25 A. Yeah.

1 Q. Okay. Now, why would you want us to prove it
2 beyond all doubt in a capital murder case?

3 A. Well, I think this is -- since it's going
4 through a court and all that, you've got to know exactly,
5 you know, all the -- and it's got to be clear, you know,
6 so that we all can, you know, decide.

7 Q. Okay. And so if you had any kind of doubt at
8 all, you would say not guilty?

9 A. I wouldn't say not guilty. I would just try
10 to, you know, find out, you know, to get it clear.

11 Q. All right. And you say you have relief --
12 religious considerations that might prevent you from
13 being a juror in this case.

14 A. Yes.

15 Q. Tell the Judge what about your religion that
16 would keep you from being a juror on this case.

17 A. Well, I'm a Catholic and I'm very close to the
18 religion, you know. I -- and so that's why, you know --
19 and that's the way, you know, we believe, you know, that
20 it's like killing, you know, this other person. I
21 mean --

22 Q. The death penalty is like killing that person?

23 A. Yes.

24 Q. And that goes against your religion?

25 A. There's already been one and then -- you know,

1 but --

2 Q. All right. So your religion tells you that you
3 can't be a juror on a death penalty case; is that what
4 you're saying?

5 A. Well, the religion is not telling me, but
6 that's the way they, you know, preach.

7 Q. Okay.

8 A. And it depends on you how you feel, too.

9 Q. That's what I'm saying.

10 A. Yes.

11 Q. By tells you, I mean that's in your heart?

12 A. Yes.

13 Q. Your heart because of your religion is telling
14 you that --

15 A. Yes.

16 Q. -- you wouldn't be --

17 A. Because it all depends how you understand it,
18 too, you know.

19 Q. Okay. And how do you understand it?

20 A. Well, to me, it's hard, you know, to decide --

21 Q. Sure.

22 A. -- which, you know, which way. Because I know
23 that there should be rules and there should be
24 restrictions, you know, about those -- all these crimes
25 and all this. But then on the other side, I say, "Okay.

1 Life in prison, okay," but then I say killing the person,
2 you know.

3 Q. That's too --

4 A. That's the only thing.

5 Q. Killing a person is too hard for you?

6 A. Yes.

7 Q. Okay. You couldn't do that?

8 A. I don't think so.

9 Q. All right. And if you were feeling mixed up or
10 confused about that if you were in the jury room, would
11 you like fall back on your religion to help you answer
12 that question?

13 A. That's the only thing. I don't know.

14 Q. You would then? You would or wouldn't? Are
15 you the kind of woman that would fall back on your
16 religion to help you answer the question, death penalty
17 or not?

18 A. I think I would feel bad. I would feel bad,
19 you know, doing that decision.

20 Q. Okay. And that's based on your religious
21 beliefs?

22 A. Yes.

23 Q. Now, do you know what beyond a reasonable doubt
24 means? Remember we talked about it on Tuesday a little
25 bit?

STATE OF TEXAS VS. RUBEN GUTIERREZ

60

1 A. Uh-huh.

2 Q. We talked about the kind of doubt based on your
3 reason and your common sense --

4 A. Yes.

5 Q. -- that would make you simply hesitate to act
6 in the most important matters of your own affairs, right?

7 A. Yes.

8 Q. Okay. And you've told us and the Judge that
9 you would want the State to prove it higher than beyond a
10 reasonable doubt, beyond all doubt. Are you firm on
11 that? You want it proved absolutely beyond all doubt?

12 A. Well, if I'm going to be in the, you know,
13 court with that, I would.

14 Q. Okay. And you do acknowledge, as we've already
15 discussed, that that is a higher burden of proof --

16 A. Uh-huh.

17 Q. -- right?

18 A. Yes.

19 Q. What project do you have in progress that would
20 affect your ability to concentrate on this case? You
21 said in your questionnaire that you have a project in
22 progress that would affect your ability to concentrate if
23 you were to have to serve as a juror.

24 A. Okay. There's a whole bunch.

25 Q. Well, tell me.

STATE OF TEXAS VS. RUBEN GUTIERREZ

61

1 A. There's a whole bunch. My mother for one
2 thing.

3 Q. Your mother?

4 A. I always have to be, you know, checking on her,
5 being with her, you know, because she's -- she's sick --

6 Q. How --

7 A. -- for one thing.

8 Q. How sick is she?

9 A. Well, she's under medication. Her mind is not
10 right. You know, we have a lady there, of course, but
11 just four hours.

12 Q. How old is your mother?

13 A. She's 86.

14 Q. Eighty-six?

15 A. Yes. She's 86.

16 Q. And do you know anything about this case? Did
17 you know Ms. Harrison or her name was Ms. Cuellar before
18 she --

19 A. I do not know her.

20 Q. Okay. Well, let me ask you this before we go
21 on to the rest of your reasons. If the victim in this
22 case was over 80, say 84, 85 years old, because of your
23 mother being right in that age group, would you be more
24 sensitive in this kind of case, maybe not be as fair?

25 A. Well, I guess I would.

1 Q. So you would be --

2 A. I guess I would.

3 Q. -- a little more sensitive --

4 A. Uh-huh.

5 Q. -- because of the health of your mother?

6 A. Yes.

7 Q. Now, do you need to be there to take care of
8 your mother?

9 A. Well, most of the time. I'm not saying that
10 I'm there all the time, but I have to be on the lookout
11 for her.

12 Q. Okay. So, are you -- I mean, are you asking
13 the Judge to give you some kind of a medical excuse not
14 to have to be a juror because you want to help your
15 mother?

16 A. Well, if I could, that would be perfect --

17 Q. You can ask him.

18 A. -- but if I -- that would be perfect. But if I
19 can't, I mean like I say, I don't like to say no. I'm
20 always, you know, willing.

21 Q. I understand.

22 A. I'm always willing. But that would be -- I
23 would feel better, you know, because I don't think -- to
24 be here with this, you know, I would have to concentrate,
25 too. It needs a lot of -- you know.

1 Q. Uh-huh. And your mother's health would keep
2 you from concentrating?

3 A. I think so.

4 Q. What else would keep you from concentrating?

5 A. Well, for one thing, I'm 67 years old.

6 Q. Uh-huh.

7 A. And this is my last year of working because I'm
8 already very tired. I've worked all my life. I'm having
9 problems with my eye vision. This eye. I have to have a
10 checkup because the doctor is afraid that it would be --
11 that glaucoma. And so, that's why I have to have a
12 checkup, you know.

13 Q. Okay.

14 A. And I'm having problems, but that's about --

15 Q. What other kind of thing would keep you from
16 concentrating? You said there were lots of things. Your
17 mother, your eyes, what else?

18 A. Well, there's a lot of things, you know --

19 Q. Okay.

20 A. -- that I can't mention them.

21 MR. BLAYLOCK: Can we approach, Judge?

22 (Off the record discussion at the bench)

23 VOIR DIRE EXAMINATION

24 BY MR. GALARZA:

25 Q. Ms. Caldera, good morning.

STATE OF TEXAS VS. RUBEN GUTIERREZ

64

1 A. Good morning.

2 Q. My name is Santiago Galarza; and to my right is
3 Daniel Reyes. We both represent Mr. Gutierrez in this
4 case.

5 I'm just going to be asking you some
6 questions to go ahead and clarify what you're talking
7 about at this time. And if you don't understand the
8 questions, just go ahead and ask me to repeat them and
9 I'll go ahead and repeat them.

10 You stated earlier that -- well, let me go
11 back a little bit. Here in Texas we have what's called a
12 bifurcated trial. What that is is it's a two-part trial,
13 okay?

14 The very first part is the guilt/innocence
15 stage. What we have at that point is whether he's going
16 to found guilty or not guilty. So what we do is we try
17 to go ahead and show you all the evidence. The State
18 goes ahead and brings any statements, any pictures or
19 anything they have. And then we go ahead and also
20 question as to that. Do you understand that?

21 A. Yes.

22 Q. And then at that point, once we introduce to
23 you all the evidence that's in the case, then the 12
24 jurors will go to the jury room; and they'll go ahead and
25 decide whether this person is guilty or not guilty. Do

STATE OF TEXAS VS. RUBEN GUTIERREZ

65

1 you understand that?

2 A. Uh-huh.

3 Q. Okay. In order for a person to be found
4 guilty, the -- beyond a reasonable doubt, that's what the
5 standard is in all cases. Do you understand that?

6 A. Yes.

7 Q. The standard whether it's a D.W.I., which is a
8 low case, a misdemeanor, or whether it's a capital murder
9 like this kind of case. Do you understand that?

10 A. (Nods head).

11 Q. If the Court were to tell you that the proof
12 that the State needs to show you is beyond a reasonable
13 doubt, would you be willing to follow that procedure?

14 A. (No response).

15 Q. Beyond a reasonable doubt, what it means is
16 like using your common sense.

17 A. Yes.

18 Q. Like an example, if you're going to purchase a
19 house, you're going to go, you're going to look at the
20 house, you're going to check the price out, and you're
21 going to check to see if the house has any damages, okay?

22 If the price on the house is 100,000 and
23 once you see that house you feel that it's not worth it,
24 you're not going to go ahead and purchase that house; is
25 that correct?

STATE OF TEXAS VS. RUBEN GUTIERREZ

66

1 A. Uh-huh.

2 Q. Okay. You're using your common sense, you're
3 using your every day reasoning to make a decision --

4 A. Yes.

5 Q. -- is that correct?

6 A. Right.

7 Q. Okay. That's the same thing that we're going
8 to be asking you to use in this kind of case, for you to
9 listen to all the statements --

10 A. Yes.

11 Q. -- for you to listen to the police officers, to
12 the doctors, and to the laymen which is the individual
13 people. And at that point you're the one that decides
14 who's telling the truth and who's lying.

15 A. Uh-huh.

16 Q. Okay? You use your common sense by looking at
17 the individual, looking at their -- how they're
18 responding to the questions, looking to see if they're
19 telling the truth or not. Do you understand that?

20 A. Right.

21 Q. Okay. In order for a case to be proved beyond
22 a reasonable doubt, you need to go ahead and follow six
23 elements or you need to follow some elements. In this
24 kind of case, the elements is the ones that are right
25 here; and I'll go ahead and read them to you.

STATE OF TEXAS VS. RUBEN GUTIERREZ

67

1 The very first thing -- the very first
2 element is that Ruben Gutierrez, the defendant; on or
3 about the 5th day of September, 1998; in Cameron County,
4 Texas; number four is intentionally; number five is cause
5 the death of an individual, namely Escolastica Harrison,
6 by stabbing Escolastica Harrison with a screwdriver or
7 object unknown to the grand jury, or by striking
8 Escolastica Harrison with an object unknown to the grand
9 jury, or causing Escolastica Harrison to impact with an
10 object unknown to the grand jury; and number six, that
11 the said Defendant was then and there in the course of
12 committing or attempting to commit the offense of robbery
13 of Escolastica Harrison, okay?

14 That's what the State needs to go ahead
15 and prove beyond a reasonable doubt, okay? Do you ever
16 play the lottery on Wednesdays and on Saturdays?

17 A. Very little.

18 Q. Okay. When you play it, if you get -- usually
19 you have to get six numbers; is that correct?

20 A. Uh-huh.

21 Q. Okay. If you only get five of the six numbers,
22 do you still get the lottery?

23 A. No.

24 Q. Why not?

25 A. If you get what?

STATE OF TEXAS VS. RUBEN GUTIERREZ

68

1 Q. If you get five of the numbers?

2 A. Five of the numbers? Yes.

3 Q. Do you still get the 18 million which is --

4 A. No.

5 Q. Why not?

6 A. Because it's not the complete -- you need one
7 more.

8 Q. Okay. Do you understand that the same thing
9 has to happen in this case?

10 A. Uh-huh.

11 Q. If they prove only five out of the six elements
12 beyond a reasonable doubt, then what would your verdict
13 be at that time, guilty or not guilty?

14 A. Well, the way you planned it, they're going to
15 have to -- no, because it's not -- you didn't get all
16 the --

17 Q. Okay. So you understand that they have to
18 prove all six elements beyond a reasonable doubt?

19 A. Uh-huh.

20 Q. Okay. What happens is once you find the person
21 not guilty, then everything stops there, okay? You get
22 to go home and the person is found not guilty. Do you
23 understand that?

24 A. I guess so.

25 Q. Okay. But if you find a person guilty, then

1 you have to go through the sentencing stage which is the
2 second part of the bifurcated trial, okay?

3 A. Uh-huh.

4 Q. At the sentencing stage, what happens is that
5 if you find the person guilty of capital murder, then you
6 have to go ahead and answer three questions or three
7 special issues which are the ones that are up there.
8 Those three questions right there, those are the ones
9 that need to be answered, okay?

10 What happens in a capital murder case, you
11 automatically don't come out and you say, "Look, this
12 person will receive the death penalty." You're not the
13 one that says that, okay? What you have to do is you
14 have to answer all three questions that are up there.

15 A. Uh-huh.

16 Q. Once you answer those three questions, if you
17 answer "yes" to Number 1 and Number 2 and "no" to Number
18 3, then the Judge is the one that will impose the death
19 penalty. You do not come out and say, "No, I vote for
20 the death." You just go ahead and answer those three
21 questions right there. Do you understand that?

22 A. Yes.

23 Q. Okay. Question number 1, "Is there a
24 probability that the defendant, Ruben Gutierrez, would
25 commit criminal acts of violence that would constitute a

1 continuing threat to society?"

2 Okay. What this means is will Ruben
3 Gutierrez come back and commit criminal acts of violence
4 again? Criminal acts of violence are acts against
5 another person. Will he commit murder again, will he
6 commit assault against another person, will he commit
7 something like that?

8 And this is what you're going to answer.
9 If 12 of you answer "yes," then you all come back with a
10 "yes" as to Number 1, okay?

11 A. Uh-huh.

12 Q. If ten of you answer "no," then you can still
13 come back with a "no" answer, okay? We only need ten of
14 you for you to give us a "no" answer, okay? If two of
15 you answer "yes" and ten of you answer "no," then you can
16 still come back. Do you understand that?

17 A. Right.

18 Q. Okay. If ten of you answer "no," then it stops
19 right there. But if 12 of you answer "yes," you all
20 bring us back a "yes" answer, then you go to Number 2.
21 Do you follow me?

22 A. Yes.

23 Q. Okay. In Number 2, what you all have to show
24 or what you all need is, "Do you find from the evidence
25 beyond a reasonable doubt that Ruben Gutierrez, the

1 defendant, actually caused the death of Escolastica
2 Harrison, or he intended to kill the deceased, or he
3 anticipated that a human life would be taken?"

4 So, let me give you a hypothetical. If
5 Mr. Reyes and I go into the Circle K and we both go with
6 a gun. We go in to commit robbery. At that point they
7 don't want to go ahead and give us the money. So one of
8 us -- I take the gun and I shoot the clerk. And then we
9 take the money and we leave. Do you understand that?

10 A. Uh-huh.

11 Q. Okay. In my hypothetical, to answer question
12 number one or -- actually, did I actually cause the death
13 of Escolastica Harrison? Did I kill the clerk?

14 A. You had the gun?

15 Q. Yes. I had the gun.

16 A. I think you did.

17 Q. Okay. And to answer question number two, did
18 Mr. Reyes intend for the clerk to be killed?

19 A. No, but he was there with the one that -- you
20 know --

21 Q. And he knew --

22 A. -- that was doing the crime and he knew that he
23 had the gun, too. So there he was.

24 Q. Okay. So at that point your --

25 A. They're both together there.

1 Q. Okay. So let's go to question number three,
2 did he anticipate that a human life would be taken?

3 A. It all depends on the person --

4 Q. Okay. So if both of us --

5 A. -- you know, if he's thinking --

6 Q. In our hypothetical, both of us went with a
7 gun. I killed the clerk. And we intended to rob the
8 clerk. Did he anticipate that a human life would be
9 taken?

10 A. I think he should have.

11 Q. Okay. So you're able to answer depending on
12 the facts --

13 A. Yes.

14 Q. -- is that correct?

15 Okay. Let me change it a little bit. If
16 we both went in to commit robbery, neither one of us as
17 far as we knew had a gun. We were just going to go in to
18 try and commit the robbery and leave, okay?

19 Mr. Reyes and I both go in. As we take
20 the money, we leave. Mr. Reyes gets out. As soon as he
21 gets out, I take out a gun and shoot the clerk. He did
22 not know about that, that I had a gun. Did he intend to
23 kill the clerk, Mr. Reyes?

24 A. There, I don't think so.

25 Q. Okay. Would you say yes or no? Did he

1 intend -- he didn't know about the gun. I was the only
2 one --

3 A. If he didn't know, but why are they doing that?
4 Still I say they're in there. They're doing the same
5 thing.

6 Q. Which is the robbery?

7 A. Yes.

8 Q. Okay. But would you agree with me that he
9 could be found guilty of robbery, but not of capital
10 murder?

11 MR. BLAYLOCK: I object. Attempting to
12 confine the witness to a certain set of facts.

13 THE COURT: It's overruled.

14 Q. (BY MR. GALARZA) Okay. You can answer the
15 question. Or do you want me to repeat it?

16 A. (No response).

17 Q. Okay. Did he intend for the clerk to be
18 killed?

19 A. The other person?

20 Q. Yes.

21 A. The other one?

22 Q. Mr. Reyes. I killed the clerk. He did not
23 know I had a gun.

24 A. Well, he didn't intend, but he was there.
25 Still I say he was there, you know.

1 Q. Okay. Did he anticipate that a person would be
2 killed?

3 A. No, I guess not.

4 Q. Okay. Let's go back. So if you answer to
5 Number 2, Number 2 is "yes" if all the jurors bring us a
6 "yes" answer? Do you follow me so far?

7 A. Yes.

8 Q. We're still -- let me go back. In the first
9 hypothetical we both had a gun. We both went in to
10 commit robbery and I killed the clerk. So at that point
11 your answer to Number 2 would be "yes;" is that correct?

12 A. Yes.

13 Q. Okay. To both of us? Because we both had a
14 gun?

15 A. Right.

16 Q. Okay. Now then you answer "yes," now we jump
17 to Question Number 3, okay? And Question Number 3,
18 "Would you take into consideration all the evidence, the
19 circumstances of the offense, the defendant's character
20 and background, and the personal moral culpability of the
21 defendant?"

22 Okay. What it's asking you at this time
23 is does this person deserve a life or a death sentence?
24 And what it's asking you, will you take into
25 consideration the evidence, okay? All the facts that

1 were introduced to you.

2 A. I would take it into consideration.

3 Q. Will you take into consideration the
4 circumstances of the offense, how the offense happened,
5 who is the one that actually killed the clerk? Would you
6 take that into consideration?

7 A. I guess so.

8 Q. Okay. Would you take into consideration the
9 defendant's character and background, the education maybe
10 of the person?

11 A. Uh-huh.

12 Q. If he was -- if he had a psychological problem.
13 Would you take different things into consideration?

14 A. Yes.

15 Q. Would you take into consideration the moral
16 culpability? Is he remorseful for what happened? Is he
17 sorry for what happened?

18 A. Well, that's too late --

19 Q. Okay.

20 A. -- for that.

21 Q. But would you take it into consideration?

22 A. I don't think so.

23 Q. You don't think so?

24 A. I don't think so.

25 MR. BLAYLOCK: Approach again, Judge?

1 (Off the record discussion at the bench)

2 Q. (BY MR. GALARZA) Ms. Caldera, would you be
3 able to set your feelings aside once the Court gives you
4 the definition of beyond a reasonable doubt, if they tell
5 you, "Look, this is what you're supposed to follow,"
6 would you be able to set your feelings aside about the
7 death penalty and just answer the questions that are
8 proposed to you?

9 A. I don't know. It all depends at that moment.
10 Right now, you know -- I would have to hear all the --

11 Q. Evidence?

12 A. -- evidence.

13 Q. Okay. Would you be able to set your feelings
14 aside as to your religion? I believe you stated awhile
15 ago because of your religion, because of church and
16 everything else, you do not believe that you would be
17 able to sit in a death penalty case; is that correct?

18 A. That's correct.

19 Q. Okay. Would you be able to set those feelings
20 aside and just answer all the questions and return a yes
21 or no depending on what your answer was?

22 A. I don't know. I don't know. I don't think so.

23 Q. You don't think so?

24 A. I don't think so.

25 Q. You stated that I believe you had some projects

1 or because of your mom, she's older. And I believe you
2 have a grandmother also; is that correct?

3 A. My great grandmother just passed away two
4 months ago.

5 Q. Oh, okay. I'm sorry about that.

6 A. She was 100 years; and I was always taking care
7 of her.

8 Q. I'm sorry about that. Would you be able to set
9 your feelings aside as to your mom that she's at home and
10 just listen to the evidence?

11 A. I'm trying. I'm trying.

12 Q. You work as a teacher aide; is that correct?

13 A. Yes.

14 Q. And what hours do you usually work?

15 A. I work eight hours.

16 Q. Eight hours?

17 A. From --

18 Q. What time to what time?

19 A. -- 7:30 to 4:00.

20 MR. GALARZA: May we approach, Your Honor?

21 (Off the record discussion at the bench)

22 MR. BLAYLOCK: Judge, due to the juror's
23 religion; she has an opposition to the death penalty that
24 she wouldn't be able to set aside; she also stated that
25 she would hold the State to a higher burden, beyond all

STATE OF TEXAS VS. RUBEN GUTIERREZ

78

1 doubt; and she stated that she needs to take care of her
2 mother, and the State would move that she be allowed to
3 go take care of her mother at this time.

4 MR. GALARZA: There's no objection, Your
5 Honor.

6 THE COURT: Okay. Thank you, Ms. Caldera.
7 I appreciate you coming by. At this time you're excused
8 to go.

9 MS. CALDERA: Thank you. I appreciate it.

10 THE COURT: Thank you.

11 MR. BLAYLOCK: Take care, ma'am. Good
12 luck with your mom.

13 MS. CALDERA: Thank you very much.

14 THE COURT: See if Mr. Escobedo is there.

15 THE BAILIFF: He's already here.

16 THE COURT: Bring him in.

17 When they pass them like that, go right to
18 the specific points that they're challenging.

19 Good morning, Mr. Escobedo.

20 MR. ESCOBEDO: Good morning, sir.

21 THE COURT: How are you?

22 MR. ESCOBEDO: Fine.

23 THE COURT: You may be seated. The
24 lawyers have a few more questions to ask you. And I'll
25 just ask you to please speak into the microphone so

STATE OF TEXAS VS. RUBEN GUTIERREZ

79

1 everybody can hear you.

2 MR. ESCOBEDO: Okay.

3 THE COURT: Thank you.

4 You may proceed.

5 ERIC ESCOBEDO,

6 having been called as a prospective juror and, upon
7 his oath, was examined and testified as follows:

8 VOIR DIRE EXAMINATION

9 BY MS. FISCHER:

10 Q. Good morning, Mr. Escobedo.

11 A. Good morning.

12 Q. How are you doing this morning?

13 A. Good.

14 Q. My name is Karen Fischer. This is John
15 Blaylock. I think you met him on Tuesday. We work for
16 the Cameron County District Attorney's Office. That
17 means we represent the people of Cameron County here
18 today.

19 Obviously you know why you're here. The
20 defendant in this case is being charged with a capital
21 offense which means that the death penalty could be an
22 ultimate punishment for him.

23 I need to ask you some questions about
24 that, but before we get there, there's a few things that
25 I wanted to talk to you about on your questionnaire.

1 First of all, I noticed that you work for Cash Pawn or I
2 think it's called Cash American Pawn.

3 A. Uh-huh.

4 Q. Now, you know the District Attorney's Office
5 deals with a lot of cases involving pawn shops. And you
6 may have spoken to us in the past or you may have spoken
7 to some of our colleagues. Is there anything about your
8 job or what you do that would cause you to be unfair in
9 this case?

10 A. No.

11 Q. Okay. Have you ever had any particular
12 dealings with our office involving your job?

13 A. No, I haven't.

14 Q. Okay. Well, you may some day. So don't hold
15 it against us is what I'm saying. In this trial I need
16 you to be fair and impartial.

17 A. Okay.

18 Q. Okay. Now, one of the questions that we asked
19 you -- and of course, these are very personal questions,
20 but I think you understand the severity of this crime is
21 such that we need to know how you feel about a lot of
22 issues because it's only right that Mr. Gutierrez get a
23 fair trial. It's only right that the people of Cameron
24 County get a fair trial.

25 We asked you, "Do you know anyone who's

STATE OF TEXAS VS. RUBEN GUTIERREZ

81

1 been to the penitentiary?" Can you tell me who you know
2 who's been to the penitentiary?

3 A. I believe it was my brother-in-law.

4 Q. Okay. And what did he go to prison for?

5 A. He had been in prison for robbery, I believe.
6 Yes.

7 Q. Okay.

8 A. I'm not really too familiar with the situation,
9 but something like that.

10 Q. Okay. Do you think he was treated fairly by
11 the system?

12 A. Yes.

13 Q. Okay. Now, this case, one of the elements in
14 the very case that Mr. Gutierrez is accused of committing
15 is robbery, that while in the course of robbing
16 Ms. Harrison that she was murdered. They murdered her.
17 Knowing that now, do you think that you can be fair?

18 A. I think I can be fair.

19 Q. Okay. Can you put aside what you know about
20 your brother-in-law's case?

21 A. Yes.

22 Q. And that's what -- basically that's kind of
23 what the law says. You have to come in here with a clean
24 slate. That's what I'm asking you to do.

25 A. Yes.

1 Q. Okay. The next thing I want to talk to you
2 about, in Texas we have a two-part trial system. The
3 first part of that is you, as a juror, you sit here in
4 the jury box and you listen to the evidence in the case.
5 And you make a decision about whether or not the
6 defendant is guilty or innocent of the crime that he's
7 being accused of.

8 If you find him guilty, then you move on
9 into the punishment phase. And because this is a special
10 case, the punishment will be a little bit differently
11 than in another case. You'll be asked a series of
12 questions. And based on your answers to those questions,
13 then the Judge will make a decision about whether or not
14 the death penalty should be imposed.

15 Let's talk about the guilt/innocence phase
16 for a minute. We talked a little bit about it on
17 Tuesday. The law in the State of Texas is such that the
18 State has the burden of proof. It's my job, it's our job
19 to prove to you the defendant committed the crime. We
20 know that, and we accept that, and that is our job.

21 We have to do that -- we have a burden of
22 proof. We have a standard; and that is beyond a
23 reasonable doubt. We have to prove the case to you
24 beyond a reasonable doubt.

25 It's not like Perry Mason or Matlock or

STATE OF TEXAS VS. RUBEN GUTIERREZ

83

1 shows like that where beyond a shadow of a doubt or
2 beyond all doubt or everything, you know -- 110 percent
3 sure, because there's no way you could be 100 percent
4 sure unless you were there.

5 And I read your questionnaire. You don't
6 know anything about this case, right?

7 A. No.

8 Q. Okay. So that's the burden. And this may
9 surprise you -- I don't know if you even noticed, but you
10 can be charged with a capital murder offense, like
11 Mr. Gutierrez is here, and the burden is the same as if
12 you have been charged with driving while intoxicated.
13 The law is always the same. The burden is always the
14 same.

15 So that's basically -- and what I'm
16 telling you is the law says you can't hold me to any
17 higher standard because it's a capital murder case.

18 And the law also says -- we asked you the
19 question, "Should the State be required to prove their
20 case beyond all doubt in a capital murder?" That's not
21 the law. The law is the standard is beyond a reasonable
22 doubt. Can you do that?

23 A. Yes.

24 Q. Can you follow the law?

25 A. (Nods head).

1 Q. Okay. Now we've got all those issues aside,
2 let's talk about your feelings about the death penalty.
3 Tell me how you feel about the death penalty.

4 A. Well, I really don't have -- I'm really not
5 against it. There are some crimes that I believe should
6 be taken to that extent of the death penalty.

7 Q. What type of crimes are those that you think?

8 A. I'd say once an individual takes it into his
9 own hands and is not -- doesn't -- somebody who's a
10 threat when put back in public; and there's no reason for
11 him to be in jail all his life, I mean, and -- and he
12 gets paroled and he's back on the streets and he does
13 that again, it takes you right back to step one. So,
14 I --

15 Q. And you seem to have a pretty good grasp of the
16 law because that's one of the very questions that the law
17 is going to ask you about whether or not you think the
18 death penalty should be imposed, okay?

19 Before we get to these, though, I just
20 want to clarify with you, the law in Texas -- and in this
21 particular case in general, Mr. Gutierrez is accused of,
22 while in the course of robbing someone, committing
23 murder. And in Texas the law says that punishment -- or
24 that crime can be punished by the death penalty.

25 There are other crimes also. Like if you

1 kill a child under the age of six, the law says that you
2 can get the death penalty. Or if you kill a police
3 officer, the law says you can get a death penalty -- you
4 can get the death penalty.

5 So if we had -- like in the hypothetical
6 situation Mr. Blaylock used on Tuesday, if you go into
7 the Circle K and rob someone, rob a store clerk -- they
8 go into the pawn shop and rob the clerk -- I noticed your
9 wife works there also. They rob your wife. And while in
10 the course of taking the money, they kill her. The law
11 says you can be subjected to the death penalty. Do you
12 think that's a good law?

13 A. Yes, I think it is.

14 Q. Okay. Do you think that's a fair punishment?

15 A. I think it is a fair punishment.

16 Q. Okay. Now, let's talk about that because you
17 understand the law. The first question -- if you find
18 the defendant guilty, the first question you're going to
19 be asked -- and based on your answers to these three
20 questions, that will tell the Judge whether or not the
21 death penalty should be imposed. It's not -- there's not
22 a big box that says yes or no for the death penalty.
23 Instead you're asked some questions.

24 And the first question is, "Do you think
25 he'd be a continuing threat to society?" And I think

STATE OF TEXAS VS. RUBEN GUTIERREZ

86

1 that you already said -- you said that that's something
2 you would take into consideration.

3 A. (Nods head).

4 Q. All I need you to do is answer these questions
5 honestly.

6 And so what kind of things would you take
7 into consideration when you're looking at whether or not
8 a person would be a continuing threat?

9 A. I believe how many times he's been in and out
10 of rehabilitation, prison --

11 Q. Okay.

12 A. -- things like that.

13 Q. Now, that's the first question. I think you
14 understand that. And you know that you'll have to give
15 an honest answer to that. And if you find that he is a
16 continuing threat, then the death penalty could be the
17 appropriate solution.

18 The next question, then, has to do with
19 something that Mr. Blaylock talked about on Tuesday.
20 That was the law of parties. Do you understand what the
21 law of parties in the State of Texas is?

22 A. I believe that if everybody takes part in a
23 crime, they're all guilty in the same extent.

24 Q. That's exactly right. That's exactly right.
25 The get-away driver in the bank robbery hypothetical, the

1 one that's driving the car is just as guilty as the one
2 who goes in when they plan to go and rob the bank.
3 That's exactly right.

4 Now, this is another part of the law.
5 This may surprise you, but I'm going to tell you what the
6 law is. In the State of Texas you don't have to be the
7 actual triggerman in order to have the death penalty as
8 the end result. How do you feel about that?

9 A. I believe it's a fair law because the reason is
10 if they do have a gun for that crime, they are intending
11 of using that gun.

12 Q. Okay. Once again, I think you've got a good
13 grasp on the law because that's exactly what this
14 question asks you. It says, "Not only you have to find,
15 number one, if the defendant actually committed the
16 crime --" and that is in the situation where you actually
17 are the triggerman. You are the one that kills the store
18 clerk.

19 But if you didn't cause the death, but you
20 intended to cause the death, then the law says you can be
21 subjected to the death penalty.

22 And the hypothetical that Mr. Blaylock and
23 I have been using it's kind of like when he and I go into
24 the store together, let's say we go into the pawn shop
25 together, and his job is to go get the money and it's my

1 job to go, you know, pick up extra stuff.

2 If I tell him -- if the store clerk is
3 giving him a hard time and I say, "John, shoot him.
4 Let's get rid of this and let's go," not only is
5 Mr. Blaylock -- he caused the death. He's the
6 triggerman. He could be subjected to the death penalty,
7 but I could too because I intended that that person die.
8 That's the law. Can you follow the law?

9 A. Okay.

10 Q. Okay. And you can answer this question
11 honestly, then, knowing that the law of parties says even
12 if you aren't the shooter, then you could get the death
13 penalty if the circumstances were right?

14 A. (Nods head).

15 Q. And I think you already talked about the last
16 one, "Anticipated that a human life would be taken." One
17 of the things you said was if they went in armed. If
18 they went in armed, then wouldn't you agree with me that
19 they anticipated that a human life would be taken?

20 A. Yes.

21 Q. The law says if you anticipated that a human
22 life would be taken, if you believe that a human life
23 could be taken and you anticipated that, then you could
24 be subjected to the death penalty. Can you follow that
25 law?

STATE OF TEXAS VS. RUBEN GUTIERREZ

89

1 A. Yes, ma'am.

2 Q. Okay. The last thing I want to talk to you
3 about -- okay. So that's these two questions. If you
4 answer "yes" and "yes," then the end result could be the
5 death penalty.

6 But you're asked a third question. And
7 there you have to consider what we call mitigation. Do
8 you understand what that word means?

9 A. Not really, ma'am.

10 Q. Let me tell you what the legal definition is.
11 And I don't know if this will make it any clearer or not,
12 but we'll try. The legal definition says mitigation is
13 something that makes you less morally blameworthy.
14 Basically it makes you less to blame.

15 A. Okay.

16 Q. And the law says that you have to consider
17 everything that comes in about the case, including
18 whether or not they were or were not the triggerman
19 maybe, and their character and their background. The law
20 says you have to take those things into consideration.

21 And then you're asked the final question,
22 "Is there something there that would make you think that
23 life was a more appropriate sentence than death?" You
24 have to be able to do that and keep your mind open. Can
25 you do that? Can you take those things into

1 consideration?

2 A. Yes, I can.

3 Q. Okay. I'm going to talk to you about two other
4 real quick issues of law, and then I'm going to let the
5 other side visit with you.

6 First of all, you're married. You have a
7 wife. Let's say you and she went on a crime spree. I'm
8 not saying that's what's going to happen, but let's say
9 you did. And let's say you were on trial.

10 The law says she does not have to testify
11 against you. You and she -- she has a spousal privilege
12 from having to say anything bad about you at all, even if
13 she saw you committing all these crimes. How do you feel
14 about that?

15 A. Well, that's kind of a tough one because you
16 know that person is holding very important evidence, but
17 yet then again, you have to respect the law and you
18 you've got to respect that person whether it's -- how can
19 I explain? Her safety, too. So, there's a lot of
20 factors into that --

21 Q. Okay.

22 A. -- into that law.

23 Q. And so you understand there may be situations
24 and -- this is what's important. The law says I can't
25 force her to testify, okay? I can't force her to get up

STATE OF TEXAS VS. RUBEN GUTIERREZ

91

1 there and testify against you.

2 Would you hold -- let's take you out of
3 the scenario now. Now you're not on trial, but you're a
4 juror. Would you hold that against the State if they
5 couldn't bring you all the evidence?

6 A. No, I wouldn't.

7 Q. Okay. The same thing goes with codefendants.
8 A codefendant is someone who goes and commits a crime
9 with another person. Like if you and your wife would go
10 on a crime spree, you would be codefendants. If
11 Mr. Blaylock and I went into the Circle K together, we
12 would be codefendants.

13 No one can force him to testify against
14 me. No one can do it. The State can't do it. I can't
15 make him get up there and say anything bad about his
16 codefendant because he has the right to remain silent.
17 He has the right not to incriminate himself. How do you
18 feel about that?

19 A. I think that's a -- it's a fair law about it.

20 Q. Okay. You can't hold it against the State if
21 they don't get up there, even though they may have some
22 important evidence to tell you. You understand that?

23 A. Yes.

24 Q. Now, sometimes the State will make a deal with
25 Mr. Blaylock, cut him a deal and say, "Okay. Instead of

1 life in prison, we'll give you 20 in prison if you tell
2 the truth and come and tell the jury what you saw and
3 what happened." How do you feel about the State cutting
4 deals with folks?

5 A. Well, in a way, it's a good tool because you
6 will get more evidence out of it. You get more facts
7 about it because of that second person being there. But
8 at the same time, why is that person getting lesser time
9 than the other person?

10 Q. Could you think maybe it's because he accepts
11 responsibility; he says, "What I did was wrong," pleads
12 guilty and takes his punishment?

13 A. That, too, but you would have to take a look at
14 his history.

15 Q. Well -- and I think that -- and you're probably
16 thinking exactly what I'm thinking -- is he might have a
17 reason to lie if he's getting a shorter sentence or
18 getting a better deal, but you would have to judge his
19 credibility. You would have to take a look at it. Is
20 that --

21 A. Yeah.

22 Q. You'd have to listen to what he's saying and
23 judge his credibility based on what you hear.

24 A. Exactly.

25 Q. Okay. That's exactly right. There's nothing

STATE OF TEXAS VS. RUBEN GUTIERREZ

93

1 else that I need to talk to you about regarding the law.

2 There are a couple of other witnesses that
3 we didn't talk about on Tuesday. One of them is a
4 gentlemen working for EMS. His name Mr. Tino Ortiz. Do
5 you know Mr. Ortiz by any chance?

6 A. No.

7 Q. Okay. Tina Hauff, she lives here in
8 Brownsville.

9 A. No.

10 Q. And Claudia Leyva, she works for the
11 Brownsville Police Department.

12 A. No, I don't.

13 Q. Is there anything that you want to tell me --
14 this is the last time you and I get to visit one-on-one.
15 Is there something about being a juror or something that
16 you think I need to know because this is the last -- if
17 there's anything bothering you or anything you think I
18 need to know, this is the last time you can tell me.

19 A. No. I just have to keep in mind that -- well,
20 I just want to say that I don't think anything would
21 cause me to not be a fair juror in this. I really don't
22 have any problems. I don't know the accused. I don't
23 rush into things. I have to take things one at a time.
24 So I think I would be a fair juror in the trial.

25 Q. Thank you, Mr. Escobedo.

STATE OF TEXAS VS. RUBEN GUTIERREZ

94

1 MS. FISCHER: I don't have any further
2 questions, Your Honor.

3 MR. REYES: May I proceed?

4 THE COURT: You may.

5 VOIR DIRE EXAMINATION

6 BY MR. REYES:

7 Q. Mr. Escobedo, good morning.

8 A. Good morning, sir.

9 Q. My name is Daniel Reyes. I'm one of the
10 attorneys that represents Ruben Gutierrez. To my left is
11 the other attorney Mr. Galarza, Santiago Galarza.

12 One question before we start on something
13 that we covered on Tuesday, do you know anybody from the
14 District Attorney's Office, secretaries, investigators,
15 attorneys?

16 A. No, I don't.

17 Q. On Tuesday I talked to you a little bit about
18 the indictment. And do you remember that I told you that
19 a grand jury indictment is simply the means whereby a
20 person in a felony prosecution is brought to trial? Do
21 you recall that?

22 A. I do.

23 Q. And I also told you that a grand jury
24 indictment under our law is absolutely no evidence of a
25 person's guilt. Do you remember that?

STATE OF TEXAS VS. RUBEN GUTIERREZ

95

1 A. Yes, I do.

2 Q. And I told you that the indictment, all it is
3 is a document, a piece of paper that tells the State of
4 Texas what it is they have to prove to you, to the jury,
5 with evidence beyond a reasonable doubt.

6 And I also told you that that piece of
7 paper tells that person who's accused of that crime
8 specifically what it is that they're being charged with.
9 That's all it is.

10 A. (Nods head).

11 Q. Did you understand all those principles of law?

12 A. Yes, sir.

13 Q. And do you agree with all those principles of
14 law?

15 A. Yes, I do.

16 Q. I also talked to you about a person's right --
17 or a constitutional right which is called the presumption
18 of innocence. Do you remember that?

19 A. Yes.

20 Q. I told you that every individual who is charged
21 with a crime in this State, whether it be a class C
22 misdemeanor, the lowest crime you can be charged with, or
23 whether it's a murder or capital murder, you're presumed
24 to be innocent; and that presumption stays with them from
25 start to finish. Do you remember that?

STATE OF TEXAS VS. RUBEN GUTIERREZ

96

1 A. Yes, I do.

2 Q. Is that something that you agree with?

3 A. Yes, I do.

4 Q. Yes?

5 A. Yes.

6 Q. Okay. Now, that presumption can only be
7 overcome if at the very end the State of Texas presents
8 enough evidence to you to convince all 12 jurors, all 12
9 members of the jury that that person committed the crime
10 beyond a reasonable doubt. Do you understand that?

11 A. Yes.

12 Q. And if you were to be selected as a juror in
13 this case, would you be willing to abide and follow that
14 instruction of the Court?

15 A. Yes, I would.

16 Q. So by that are you meaning that you would give
17 Mr. Gutierrez that presumption of innocence, and wait
18 until the very end, and then decide whether or not he's
19 guilty?

20 A. Yes, sir.

21 Q. I talked to you also about the definition of
22 beyond a reasonable doubt. Do you remember that?

23 A. Yes, sir.

24 Q. And that's the -- the State of Texas has the
25 burden of proof. They're the ones that are required to

1 bring evidence to you to convince you beyond a reasonable
2 doubt that a person committed a crime. Do you understand
3 that?

4 A. Yes.

5 Q. And the definition is right in front of you
6 here. Let me go ahead and read it to you and then point
7 out some things on there.

8 A. (Nods head).

9 Q. It says, "A reasonable doubt is a doubt based
10 on reason and common sense after a careful and impartial
11 consideration of all the evidence in the case. It is the
12 kind of doubt that would make a reasonable person
13 hesitate to act in the most important of his own
14 affairs."

15 First of all, it's asking you to just use
16 your reason and common sense and carefully and
17 impartially consider everything that's presented to you
18 in court. Can you could do that?

19 A. Yes, sir.

20 Q. The second part is basically asking you to take
21 all the care and all the consideration that you would
22 give something in your own personal life, for example the
23 purchase of a house, or the purchase of a car, bring that
24 care and consideration that you would give to that matter
25 and apply it and use it here in this case. Can you do

1 that?

2 A. Yes, sir, I could.

3 Q. "Reasonable doubt therefore must be proof of
4 such a convincing character that you would be willing to
5 rely and act upon it without hesitation in the most
6 important of your own affairs." Do you see that?

7 A. Yes, sir.

8 Q. That the evidence as presented to you must be
9 of such a convincing character that you would not only be
10 willing to rely on it, but you would be willing to act
11 without hesitation. Could you do that?

12 A. Yes, sir.

13 Q. Now, you understand that the State of Texas is
14 required to prove the case beyond a reasonable doubt.
15 They're the ones that brought the charges, they're the
16 ones that must prove them.

17 Now, the reason that I bring that up is
18 because on your questionnaire on question number 81,
19 which is on page number 21, it says, "Do you want to be a
20 juror in this case?" And you answered, "Yes." "Why or
21 why not?" "I'm very interested in the case and to hear
22 both sides of the story."

23 Okay. Now, do you understand that we
24 under our law are not required to present any evidence.
25 And by we, I'm talking about Mr. Gutierrez through his

1 attorneys. Do you understand that?

2 A. Yes, sir.

3 Q. And do you understand that we are not required
4 to have Mr. Gutierrez testify?

5 A. Yes, sir.

6 Q. Okay. And that is a right that's given to
7 every person that's accused. Do you understand that?

8 A. Uh-huh.

9 Q. Now, the reason I ask that is because here I
10 guess what -- your answer is leading me to believe that
11 you would want to hear both sides of the story.

12 A. Well, I would, but if it came down to only one
13 side giving me the evidence, I would then study that --
14 all the facts that they're giving me.

15 Q. And would you -- for example, let's say that we
16 didn't present any evidence. And we can just go ahead
17 and let the State close its case. And we don't present
18 any witnesses, any photographs, any documents, nobody
19 testifies for us.

20 Would you maybe -- when you're back in the
21 jury room deliberating, would you be thinking, "Well, I
22 wish I would have heard from Mr. Gutierrez and his
23 attorneys"?

24 A. I guess I would have that consideration. I
25 wish I would have heard his side of the story, but I

1 wouldn't hold it against that person.

2 Q. So the question then becomes would it affect
3 you --

4 A. No, it wouldn't.

5 Q. What about if Mr. Gutierrez didn't testify,
6 would you be thinking about that if you were back in the
7 jury room deliberating?

8 A. No, sir. I wouldn't, sir.

9 Q. It wouldn't affect you in any way with respect
10 to your verdict?

11 A. I don't think it would. No, sir.

12 Q. Do you understand that once we have you as a
13 jury member, we're not allowed to ask you any more
14 questions? And we need to know right now how it is that
15 you're thinking because if you're sitting in the jury box
16 and we're presenting evidence, we don't know how it is
17 that you're going to be thinking and what's going through
18 your mind. So we need definite answers at this point.

19 A. Yes, sir.

20 Q. And with respect to my question if
21 Mr. Gutierrez didn't testify, would that affect your
22 verdict in any way?

23 A. I don't think it would, sir. No, sir. I --

24 Q. Okay. You used the words, "I don't think it
25 would."

STATE OF TEXAS VS. RUBEN GUTIERREZ

101

1 A. No.

2 Q. It might or it might not?

3 A. It wouldn't.

4 Q. It would not?

5 A. It would not.

6 Q. And you honestly feel that way?

7 A. I honestly do.

8 Q. I talked to you about the elements also on
9 Tuesday; and they're right here on the charts just to my
10 left. Remember I told you that every crime in this State
11 is made up of elements; and those are the things that the
12 State of Texas has to prove in particular to you with
13 evidence beyond a reasonable doubt.

14 For example, if you look at number one, it
15 says, "The defendant, Ruben Gutierrez." They have to
16 present enough evidence through witnesses, testimony,
17 documents, whatever, pictures, to convince you that it
18 was Ruben Gutierrez that committed the crime beyond a
19 reasonable doubt. Do you understand that?

20 A. Yes, sir.

21 Q. They have to go ahead and present enough
22 evidence to convince you beyond a reasonable doubt that
23 this crime occurred on or about September the 5th of
24 1998. And they have to prove all the elements, three,
25 four, five as well as number six before you can say

STATE OF TEXAS VS. RUBEN GUTIERREZ

102

1 guilty. Do you understand that?

2 A. Yes, sir.

3 Q. Okay. Now, the law also states that if they
4 fail to prove even one of those elements, let's say they
5 only prove five elements and not six, that you have to
6 say by your verdict not guilty because they brought the
7 charges, they have to prove each and every one of those
8 things on that indictment.

9 A. Okay.

10 Q. Do you agree with that?

11 A. Yes, sir.

12 Q. Let me give you an example. Let's say number
13 six, that they -- do you see where it says, "A murder was
14 committing while in the course of committing or
15 attempting to commit robbery"?

16 A. Right.

17 Q. Do you see that?

18 A. Yes.

19 Q. Now, robbery, would you agree with me, is
20 different from a burglary? You have burglary of a
21 habitation, a burglary of a building or a house where you
22 go into somebody's property and steal something; whereas
23 robbery is maybe from a person who you threaten with harm
24 of violence or threat of violence. Do you see the
25 difference?

STATE OF TEXAS VS. RUBEN GUTIERREZ

103

1 A. Yes, sir.

2 Q. So let's say in a hypothetical situation they
3 prove that a burglary of a house happened and not a
4 robbery. Do you see how they failed to prove that
5 element number six?

6 A. (Nods head).

7 Q. How many elements did they prove to you?

8 A. Five.

9 Q. Okay. So based on our law, what would your
10 verdict have to be?

11 A. Not guilty because they didn't put the sixth
12 one there.

13 Q. Do you agree with that?

14 A. Yes.

15 Q. Is that something that you feel that you would
16 be able to do if selected as a juror in this case?

17 A. Yes, sir.

18 Q. Now, you understand that this is a capital
19 murder case.

20 A. Yes, sir.

21 Q. Do you understand that?

22 A. Yes, sir.

23 Q. And do you feel that -- if you were put in that
24 situation, do you feel that you would be able to do
25 that --

1 A. Yes.

2 Q. -- knowing this is a capital murder?

3 A. Yes, sir.

4 Q. In Texas we also have what is called a
5 bifurcated trial system. That's just a fancy phrase or
6 term that means a two-part trial; the guilt/innocence
7 phase and then the punishment phase.

8 Obviously if you find somebody not guilty,
9 you don't need a second phase. That forever ends that
10 case, okay?

11 A. Okay.

12 Q. If you find somebody guilty, then you go to the
13 second part which is called, again, the punishment phase
14 or sentencing phase.

15 In Texas we also have what are called
16 lesser included offenses. For example, capital murder,
17 some crimes that fall under that would be murder or
18 robbery. Do you understand that?

19 A. Okay.

20 Q. Those are lesser crimes. In Texas, the range
21 of punishment for a murder is anywhere from five years in
22 prison to 99 years or life. Do you understand the whole
23 range?

24 A. Yes, sir.

25 Q. Okay. Now, do you understand that you would be

STATE OF TEXAS VS. RUBEN GUTIERREZ

105

1 asked to make a decision as to what number of years you
2 would sentence an individual to prison after you would go
3 ahead and have evidence presented to you? Do you
4 understand that?

5 A. Yes, sir.

6 Q. The only question that I can ask right now is
7 whether you could keep an open mind and consider the full
8 range of punishment anywhere from five years to 99 years
9 or life and any number of years in between, and then hear
10 the evidence and then make a decision?

11 A. Yes, sir.

12 Q. Could you do that?

13 A. I could.

14 Q. With robbery, the range of punishment is two
15 years in prison to 20 years in prison. The same
16 question, can you keep an open mind, consider two years,
17 consider 20 years and any number of years in between, and
18 then make a decision after evidence has been presented?

19 A. Yes, sir.

20 Q. Those questions that are in front of you that
21 are called special issues, those you only get to if you
22 find a person guilty of capital murder. Do you
23 understand that?

24 A. Yes, sir.

25 Q. And basically with respect to 1 and 2, the

STATE OF TEXAS VS. RUBEN GUTIERREZ

106

1 State of Texas still has its burden of proof. In other
2 words, they have to prove those two questions to you or
3 issues, special issues, with evidence beyond a reasonable
4 doubt. This definition here still applies to those two.
5 Do you understand that?

6 A. Yes, sir.

7 Q. Okay. Would you be willing to, if selected as
8 a juror, hold the State to that burden?

9 A. Yes, sir.

10 Q. Now, with respect to Number 1 and Number 2, in
11 order for the jury to say "yes" to Number 1 and "yes" to
12 Number 2, all 12 jurors have to answer "yes." Do you
13 understand?

14 A. Yes, sir.

15 Q. And if they want to answer "no," only ten
16 jurors have to say "no" to Number 1 and only ten jurors
17 have to say "no" to Number 2. Do you understand?

18 A. Yes, sir.

19 Q. Okay. Now, with respect to Number 3, if all
20 12 -- if the jury wants to answer, "yes," "Yes, there are
21 some sufficient mitigating circumstance or
22 circumstances," if they want to answer "yes," only ten
23 jurors have to say "no" -- I mean, I'm sorry, "yes."

24 A. Yes.

25 Q. Do you understand that?

STATE OF TEXAS VS. RUBEN GUTIERREZ

107

1 A. Yes.

2 Q. But if they want to answer "No, there's nothing
3 that mitigates that person's blameworthiness, their
4 culpability. That person should get the death penalty,"
5 all 12 jurors have to agree. Do you follow me?

6 A. Yes, sir.

7 Q. Do you agree with those requirements?

8 A. Yes, sir.

9 Q. Now, with respect to Special Issue Number 1,
10 it's asking you, "Is there a probability that the
11 defendant would commit criminal acts of violence that
12 would constitute a continuing threat to society?"

13 If you look at the word "probability,"
14 would you agree with me that that's basically asking you
15 whether it's more likely than not?

16 A. (Nods head).

17 Q. Is that a definition you would give to that
18 word?

19 A. Yes.

20 Q. Is it more likely than not that he would commit
21 criminal acts of violence; and because he would do so, he
22 would continue to be a threat to society?

23 A. Yes, sir.

24 Q. And would you agree with me that that question
25 is basically asking you to make a determination as to

STATE OF TEXAS VS. RUBEN GUTIERREZ

108

1 something that might or might not even happen some time
2 in the future?

3 A. Yes.

4 Q. It's basically asking you to punish an
5 individual in this particular case for something that
6 might not even happen in the future. Would you agree
7 with me?

8 A. Yes, sir.

9 Q. And is that something that you would take into
10 consideration in answering that question?

11 A. Yes.

12 Q. Now, if you look -- the fourth line, do you see
13 where it's asking about criminal acts of violence? The
14 first question --

15 A. Okay.

16 Q. -- the fourth line, criminal acts of violence.

17 A. Yes, sir.

18 Q. Do you see how it's narrowing the scope of the
19 things that you're supposed to look at? You would agree
20 with me that there's crimes against a person and also
21 crimes again property?

22 A. Yes.

23 Q. Criminal acts of violence would be something
24 that would be committed against a person. An assault for
25 example, a murder, something like that would be an act of

1 violence.

2 A. Uh-huh.

3 Q. Okay. Do you see how it's limiting what it is
4 that you need to look at; for example, whether that
5 person would commit other murders, whether that person
6 would commit other assaults, okay?

7 A. (Nods head).

8 Q. It's not asking about burglaries or, you know,
9 thefts, things like that. Do you see that?

10 A. Yes, sir.

11 Q. Is that something you agree with?

12 A. Yes.

13 Q. That's basically what the question is asking
14 you. And if you were to be selected as a juror and you
15 got to that point, to this point, would you be able to
16 follow that instruction?

17 A. Yes.

18 Q. Now, Question Number 2, it's asking you, "Do
19 you find from the evidence --" and what that poster board
20 is missing where it's supposed to say, "Beyond a
21 reasonable doubt."

22 "Do you find from the evidence beyond a
23 reasonable doubt that Ruben Gutierrez, the defendant,
24 either himself caused the death of the victim; if he
25 didn't, did he intend to kill the deceased or another; or

STATE OF TEXAS VS. RUBEN GUTIERREZ

110

1 if he did not, did he anticipate that a human life would
2 be taken?"

3 This is basically talking about law of
4 parties; and Ms. Fischer talked to you about that
5 earlier. Now, do you understand that in our State, just
6 because two individuals go in to a Circle K, for example,
7 and one of them shoots the clerk and kills them, they're
8 not automatically both guilty of murder? Do you
9 understand that?

10 A. Yes, sir.

11 Q. There has to be something more proven by the
12 State before you can say, "Yes, they're both guilty of
13 murder." Now, both of them might be guilty of the
14 robbery, but with respect to the murder, there's
15 something more that they need to prove. Do you
16 understand that?

17 A. Okay. Yes.

18 Q. Now -- and this is where this comes into play,
19 "Whether the person actually killed the victim; if he
20 didn't, did he anticipate or did he intend that somebody
21 be killed," okay?

22 Let me give you some examples. Let's say
23 Mr. Galarza and I go into a Circle K. We both arm
24 ourselves -- or let me back up here. Let's say that I
25 put a gun in my pocket and he sees me. And I tell him,

STATE OF TEXAS VS. RUBEN GUTIERREZ

111

1 "If anybody crosses me, you know, keeps us from going in
2 there and stealing, you know, the cigarettes that we're
3 going to take, I'm going to kill them."

4 Now, do you see where in that situation if
5 you are to be -- if I was the person on trial after
6 having gone in there and taken the cigarettes and
7 shooting the clerk myself, with respect to whether or not
8 I actually myself killed that person, that victim, what
9 would your answer have to be? Did I actually kill that
10 clerk?

11 A. Yes.

12 Q. Because I went in there, I shot him, right?
13 Now, did I -- where it's asking did I intend to kill the
14 clerk?

15 A. They were your intentions.

16 Q. Right. And what about did I anticipate? In
17 thinking, "Well, if anybody crosses me, I'm going to kill
18 them," so I could have anticipated that a human life was
19 going to be taken, right?

20 A. Yes.

21 Q. If Mr. Galarza, if he was there, he knew about
22 the gun, he knew that if anybody crossed me I was going
23 to kill them, now with respect to him, did he actually
24 kill that clerk?

25 A. No, he didn't, but --

STATE OF TEXAS VS. RUBEN GUTIERREZ

112

1 Q. So with respect to that, what would your answer
2 have to be with respect to Mr. Galarza if they're asking,
3 "Did he actually kill that clerk?"

4 A. He didn't do the action, but he was there
5 taking part in the action.

6 Q. Okay. But my question was did he actually kill
7 that clerk?

8 A. No, he didn't.

9 Q. Okay. So your answer to number two would have
10 to be what?

11 A. No.

12 Q. Okay. Now, did he intend to kill somebody?
13 When we went in there, did he himself say, "Well, I'm
14 also going to kill somebody"? Did he do that or was it
15 only me?

16 A. It was only you.

17 Q. Okay. So when they're asking you did he intend
18 to kill somebody, your answer would have to be what?

19 A. No.

20 Q. Okay. Now, with respect to number three, did
21 he anticipate that a human life would be taken? Now, did
22 he know that I had a gun?

23 A. Yes.

24 Q. Did he know that I might kill somebody?

25 A. Yes.

STATE OF TEXAS VS. RUBEN GUTIERREZ

113

1 Q. So could he have anticipated that a human life
2 would be taken?

3 A. Yes.

4 Q. All right. So if you're being asked to answer
5 that question, your answer would be what?

6 A. Yes.

7 Q. Okay. Let me give you another scenario. Let's
8 say that he and I go into a Circle K. I, in my mind,
9 think I'm going to kill somebody if they get in my way of
10 taking those cigarettes, okay? I put a gun in my pocket.

11 Mr. Galarza has no idea what I'm thinking
12 about. He has no idea that I have a gun with me. All he
13 and I plan to do is go into that Circle K. One of us is
14 going to distract the clerk, you know, try and get him to
15 go somewhere else to the store. We're going to grab
16 cigarettes, put them in our pocket, and run out, okay?

17 We go in there. And as I'm distracting
18 the clerk, I shoot him and I kill him. Then we run out.
19 Do you see how I actually killed that clerk --

20 A. Yes.

21 Q. -- how I could have intended -- I intended
22 actually to kill that clerk and I anticipated that a
23 human life would be taken?

24 But with respect to Mr. Galarza, he didn't
25 actually kill that clerk. And since he didn't know I had

1 a gun and he didn't know that I intended to kill
2 somebody, and all we had planned was to grab the
3 cigarettes and run out, that's it, that he could not have
4 intended to kill anybody. Then it comes to the last
5 part, could he have anticipated?

6 A. No.

7 Q. No, right? Because there's no way he could
8 have done that. Do you see how it requires something
9 more, not just because you go in there you're
10 automatically guilty?

11 A. Yeah.

12 Q. Now, you can find him guilty of the theft
13 maybe, would you agree with me?

14 A. Yes.

15 Q. But not necessarily of the murder of the clerk.
16 Do you see that?

17 A. Yes, sir.

18 Q. Okay. Now Question Number 3, do you understand
19 that you only get to this question if you answer "yes" to
20 Number 1 and Number 2, okay? "Yes, he will be a threat,"
21 or "Yes, he actually killed somebody or he intended or
22 anticipated." Do you see that?

23 A. Yes.

24 Q. And you only get to Number 3 because basically
25 by answering "yes" to 1 and 2, the death penalty would be

1 imposed.

2 So Number 3 is asking you, "Is there any
3 sufficient mitigating circumstance, reason or reasons,
4 why that person should get a life sentence and not the
5 death penalty?" Do you see that?

6 A. Yes, sir.

7 Q. Do you see how it's basically asking you if you
8 find that one reason is a sufficient mitigating reason,
9 then that's enough for you to answer "yes" to this
10 question, okay? You don't need like five or six reasons.
11 One is sufficient if that in your mind is a sufficient
12 mitigating reason. Do you understand that?

13 A. Yes, sir.

14 Q. And it's basically asking you to take into
15 consideration all the evidence, okay? Now, we're not
16 required to present any evidence to you. We can just sit
17 back and do nothing, say nothing. But if we present
18 witnesses to you, evidence to you, would you take that
19 into consideration?

20 A. Yes, sir.

21 Q. Circumstances of the offense, you know, how it
22 is that the person was killed, whether or not the person
23 actually killed that victim, whether or not the person
24 intended or anticipated that a human life would be taken,
25 all those things would you take those into consideration

STATE OF TEXAS VS. RUBEN GUTIERREZ

116

1 in answering that third question?

2 A. Yes, sir.

3 Q. It's asking you to take into consideration the
4 person's character and background, whether or not he came
5 from a broken home, whether or not he was abused as a
6 child, whether or not he had psychological or psychiatric
7 problems when he was growing up, whether or not he came
8 from a rich or poor family, you know, how he did in
9 school, was he a good student or was he bad student. Do
10 you see how all those go as to his character and
11 background?

12 A. Yes, sir.

13 Q. Would you take those into consideration?

14 A. Yes, sir.

15 Q. The personal moral culpability of the
16 defendant, whether or not a person has shown remorse,
17 whether or not a person has shown that he's sorry for
18 what happened, would you take that into consideration as
19 it's asking you there?

20 A. Yes, sir.

21 Q. You talked earlier about parole, remember how a
22 person might get parole --

23 A. Uh-huh.

24 Q. -- and that individual might be back out on the
25 street. And you stated earlier that the punishment

STATE OF TEXAS VS. RUBEN GUTIERREZ

117

1 should be greater for -- if the crime that they committed
2 was more serious. Do you remember that?

3 A. Yes, sir.

4 Q. Now, in Texas we have what's called an
5 escalating parole system which means that the more
6 serious the crime that you commit, the more time you have
7 to spend in prison before you become eligible for parole.
8 Do you follow me?

9 A. Yes, sir.

10 Q. And in Texas, not necessarily because you
11 become eligible for parole does it necessarily mean that
12 you're going to be automatically released. They might
13 deny your application for parole. Do you see where that
14 could happen?

15 A. Yes, sir.

16 Q. And you understand that in this State, victims
17 of the family -- or I'm sorry. Family members of the
18 victim can come to the parole hearings and object to that
19 person's release. Do you understand that?

20 A. Yes, sir.

21 Q. So they have a say-so.

22 Now, let me just give you examples of as
23 to how our parole system works in this State. Let's say
24 an individual is charged -- or charged and then convicted
25 and then sentenced to -- for a burglary where there was

STATE OF TEXAS VS. RUBEN GUTIERREZ

118

1 no weapon or violence used. Let's say that individual
2 was sentenced to ten years in prison.

3 Under our law, that person would have to
4 serve 25 percent or one-fourth of the time in prison or
5 two and a half years before they would become eligible
6 for parole. Do you follow me?

7 A. Yes, sir.

8 MS. FISCHER: Your Honor, I'm going to
9 object. That's a misstatement of the law. There is no
10 one-fourth time on burglary.

11 MR. REYES: I'm talking about whether
12 there is no weapon or no violence used, Judge.

13 MS. FISCHER: Judge, that's an improper
14 statement of the law. Going into parole, these type of
15 details is improper. The time for parole is not the
16 appropriate issue.

17 MR. REYES: It shows the escalating parole
18 system that we have.

19 THE COURT: It's overruled. Go ahead.

20 Q. (BY MR. REYES) Do you understand, for
21 example, if an individual is convicted and sentenced for
22 an aggravated offense where a weapon was used, they have
23 to serve half of the time of that ten-year sentence.
24 They would have to serve five years before they even
25 become eligible for parole.

STATE OF TEXAS VS. RUBEN GUTIERREZ

119

1 And in a murder case, an individual would
2 have to serve 35 calendar years before they would be
3 eligible for parole. So do you see how it keeps
4 escalating?

5 A. Yes, sir.

6 Q. And do you understand that in Texas the highest
7 crime you can be convicted of is capital murder?

8 A. Yes, sir.

9 Q. Do you understand how the parole system works?

10 A. Yes, sir.

11 Q. You talked about also the spousal privilege
12 that we have here in the State of Texas. You stated that
13 you would not hold it against the State if that were the
14 case; is that correct?

15 A. Yes, sir.

16 Q. Now, the question then that I'm asking you is
17 whether you would hold it against Mr. Gutierrez.

18 A. No, sir.

19 Q. Do you understand that that's the right that a
20 spouse has?

21 A. Uh-huh.

22 Q. And that spouse can go ahead and themselves
23 assert that right and nobody can take it away from them.

24 A. Yes, sir.

25 Q. So basically, there's nothing we can do to

STATE OF TEXAS VS. RUBEN GUTIERREZ

120

1 force that individual to come and testify. Do you
2 understand that?

3 A. Yes, sir.

4 Q. In some cases the State attempts to introduce
5 statements that are allegedly made by the person who's on
6 trial. And they're usually called confessions or
7 statements of accused. Do you see where that could
8 happen?

9 A. Yes, sir.

10 Q. My question to you, Mr. Escobedo, is whether
11 you would be willing to keep an open mind, listen to all
12 the evidence, and then decide whether or not that
13 statement was given voluntarily.

14 A. Yes, sir.

15 Q. For example, would you be willing to listen to
16 evidence maybe that an individual might have asserted his
17 Miranda rights, maybe wanted an attorney, and the police
18 officers kept questioning that individual, okay?

19 A. (Nods head).

20 Q. Or maybe where threats were being made against
21 that person, or maybe against his mother or his father,
22 that they would probably arrest them if he didn't give
23 them a statement. Do you see that?

24 A. Yes, sir.

25 Q. And do you see if those are the circumstances

STATE OF TEXAS VS. RUBEN GUTIERREZ

121

1 or the facts of a particular case, that statement might
2 not have been given voluntarily?

3 A. Yes, sir.

4 Q. Do you understand that? And if the Judge were
5 to instruct you that if a statement was not given
6 voluntarily or freely or in violation of the law, that
7 you are not to consider it for any reason whatsoever --

8 A. Yes, sir.

9 Q. -- could you set it aside and not consider that
10 statement for any reason whatsoever?

11 A. Yes, sir.

12 Q. You would be able to do that?

13 A. (Nods head).

14 Q. In some cases the State of Texas also makes
15 deals with codefendants. And in cases where there's
16 maybe more than one person accused of a crime, they're
17 called codefendants. And in some cases they make deals
18 with one of those defendants for them to come and testify
19 in court against the individual who's on trial. Do you
20 see where that could happen?

21 A. Yes, sir.

22 Q. And for example, if they're facing a life
23 sentence or 99 year sentence, they might make a deal
24 where they might get 20 years. Do you see how they're
25 saving themselves all that time in prison?

STATE OF TEXAS VS. RUBEN GUTIERREZ

122

1 A. Uh-huh.

2 Q. And my question is just whether you would be
3 able to keep in mind the fact that this person might have
4 some reason to come to court and lie, to keep the deal.

5 A. Yes.

6 Q. Okay. And even if the condition of their
7 testimony is that the testimony that they give in court
8 be truthful, do you agree with me that there's no way you
9 can know whether or not that person is telling the truth?
10 Do you understand?

11 A. Yes.

12 Q. So do you see where that person might want to
13 go ahead and come to court and lie to be able to get his
14 deal?

15 A. Yes, sir.

16 Q. You as a juror would have to sit and listen to
17 all the witnesses that come before you. And you're
18 supposed to judge, you know, their credibility, their
19 believability.

20 And in some cases some jurors might think,
21 "Well, that person's a doctor. Because he has a medical
22 degree, I'm going to believe 100 percent of what they
23 say."

24 Or another juror might say, "Well, that
25 person is a law enforcement official. He's a police

STATE OF TEXAS VS. RUBEN GUTIERREZ

123

1 officer. I'm going to believe everything of what he
2 says." Do you see where that could happen?

3 A. Yes, sir.

4 Q. And would you agree with me, Mr. Escobedo, that
5 some of these individuals might have a reason to lie?

6 A. Yes.

7 Q. Okay. Or maybe a doctor might not have a
8 reason to lie, but maybe if evidence wasn't given to him
9 properly, his diagnosis or, you know, whatever he might
10 have done might be in error.

11 A. Yes.

12 Q. Do you see that?

13 So my question is just whether you'd be
14 able to keep an open mind, listen to the witnesses, look
15 at their demeanor, how is it that they're behaving in
16 court, and then decide whether you're going to believe
17 them or not.

18 A. Yes, sir.

19 Q. Can you do that?

20 A. (Nods head).

21 Q. Do you have any relatives in law enforcement?

22 A. No, I don't.

23 Q. And have you been a victim of a crime?

24 A. No, I haven't.

25 Q. Have you heard anything about this case in

1 particular?

2 A. No, sir, I haven't.

3 Q. Have you formed any opinion whatsoever?

4 A. No.

5 Q. And are you willing as a juror to keep an open
6 mind?

7 A. Yes, I am.

8 Q. Have you served on a jury before?

9 A. No, I haven't.

10 Q. Let me just look through your questionnaire one
11 last time. On question number 53 it's asking what you
12 think about our laws. And you basically state that you
13 believe that they are too lenient.

14 Do you think that because you believe that
15 they're too lenient, you might sit as a juror on this
16 case and make sure that the harshest punishment that's
17 available to you, that that's what you would give?

18 A. No, sir, I wouldn't. I would have to -- I
19 would have to take into consideration all the evidence
20 and the laws.

21 Q. So with respect to that question about laws
22 being too lenient, would you set that opinion aside --

23 A. Oh, yes.

24 Q. -- and just listen to the evidence and make --

25 A. Yes, sir.

1 Q. -- a decision based on what you hear?

2 A. Yes, sir.

3 Q. And you're absolutely sure that that opinion of
4 yours, that our laws are too lenient, would not affect
5 you at all?

6 A. No, sir. I would have to put them aside.

7 Q. Number 63, "What are your feelings about the
8 death penalty?" "I am for it. Why have somebody in
9 prison for the rest of their lives living off of taxes
10 for a crime that was to that extent."

11 Okay. Do you see how if you were selected
12 as a juror, the fact that you -- one of the options that
13 would happen or be available as a result of your answers
14 would be a life sentence.

15 A. Uh-huh.

16 Q. Okay? And that goes exactly opposite to what
17 you're saying here. Basically you're saying, "Well, why
18 keep him in prison for life if they're spending our tax
19 dollars," okay?

20 A. (Nods head).

21 Q. And do you see how that would lead me to
22 believe that once you get on a jury, you might be willing
23 to give him the death penalty because you don't want our
24 tax dollars to be spent on him.

25 A. Yes, sir.

1 Q. Do you see that?

2 A. Yeah.

3 Q. My question is whether you'd be able to set
4 that feeling aside and make a decision just based on the
5 evidence.

6 A. Oh, yeah. Yes. That's just my opinion.
7 That's -- I don't make those laws.

8 Q. And do you think it would affect you at all?

9 A. No, sir, I wouldn't.

10 Q. And you're sure?

11 A. I could honestly say I couldn't -- I wouldn't
12 because this is a -- I believe this is another person's
13 life; and I would have to take a lot of things into
14 consideration besides my personal opinions on certain
15 laws.

16 Q. And the same thing with question number 66,
17 "What is the best argument for the death penalty?" "Do
18 you want murderers on our streets?" Okay. You know you
19 talked about a person being paroled. Do you think that
20 you having that opinion, would that affect you in any
21 way?

22 A. No, sir. What I would -- what I was trying to
23 come forward with that question is, well, there is
24 different kinds of murders, too. There's -- I would have
25 to keep in consideration the type of murder it was, was

1 it done just out of -- premeditated or was it done out of
2 self-defense.

3 Q. The question then would become if you're
4 sitting as a juror and then you're at the punishment
5 phase of either a capital murder, murder or robbery, the
6 fact that you would have in your mind that that
7 individual might be paroled, would you tend to give him
8 the highest punishment or answer those questions in a way
9 that would lead to the death penalty because you don't
10 want that person out on our streets?

11 A. No. Well, I would have to answer the questions
12 just to be fair with Mr. Gutierrez.

13 Q. And do you honestly feel that you would be able
14 to set that feeling aside?

15 A. Yes, sir.

16 Q. And you wouldn't have any difficulty doing
17 that?

18 A. No, sir.

19 Q. You honestly feel that way?

20 A. I honestly do feel that way.

21 Q. Anything else you wanted to ask? This is the
22 last time we can talk to you if you're selected as a
23 juror in this case.

24 A. No, sir.

25 Q. Just one last thing before I finish. On

1 question 79, page 20, "In a group situation once you have
2 formed an opinion, do you usually," and you answered B,
3 "Stand by your original opinion despite what others
4 believe."

5 A. Uh-huh.

6 Q. Do you understand that you as a member of the
7 jury would have to go ahead and listen to the evidence,
8 go back to the jury room, deliberate with the rest of the
9 jurors, and then you would vote, first of all, on
10 guilt/innocence and then special issues or punishment?
11 Do you understand that?

12 A. Yes, sir.

13 Q. And basically what this leads me to believe is
14 that once you've made a decision, you're going to stick
15 by that decision and not even deliberate with the rest of
16 the jurors.

17 A. No. I would deliberate, but if I would -- it
18 would lead me to believe that he was -- that he was
19 guilty and all the rest of them keep telling me, "No,
20 he's innocent," I'm not going to go with the crowd just
21 because they're telling me he's innocent. I'm going to
22 go with what they say. I'm going with what I think and
23 because of the facts that they give me.

24 Q. But would you be willing as a juror to
25 deliberate, to talk --

STATE OF TEXAS VS. RUBEN GUTIERREZ

129

1 A. Oh, yeah.

2 Q. -- and discuss it with them?

3 A. Yes, sir.

4 Q. And if you felt that way, that's fine, but you
5 wouldn't just sit back and say, "No more talking"?

6 A. No, sir.

7 Q. Anything else?

8 A. No, sir.

9 Q. Thank you, Mr. Escobedo.

10 MR. REYES: We have nothing further, Your
11 Honor.

12 THE COURT: Okay, Mr. Escobedo. Let me
13 ask you to step down for a few minutes. We'll take up
14 some legal matters, and then I'll bring you right back.

15 (Prospective juror left the courtroom)

16 THE COURT: Is this juror acceptable to
17 the State?

18 MS. FISCHER: Yes, Your Honor.

19 THE COURT: Is he acceptable to the
20 defense?

21 MR. REYES: May we have a minute, Your
22 Honor?

23 THE COURT: Yes.

24 (Brief pause in proceedings)

25 MR. REYES: We don't have a challenge,

STATE OF TEXAS VS. RUBEN GUTIERREZ

130

1 Your Honor, however we do exercise a peremptory strike.

2 THE COURT: That would be number five?

3 MR. GALARZA: Five.

4 THE COURT: Bring him in.

5 THE BAILIFF: Yes, Your Honor.

6 THE COURT: Okay. Mr. Escobedo, that's
7 all the questions we have for you today. You're excused
8 to go at this time.

9 MR. ESCOBEDO: Thank you.

10 THE COURT: Thank you very much.

11 Let's take a break. Ms. Rivera was having
12 car problems. Let me go check and see if she made it to
13 the courthouse or not.

14 (Recess taken from 10:47 a.m. to
15 10:57 a.m.)

16 THE COURT: You may be seated. Bring in
17 Ms. Rivera.

18 THE BAILIFF: Yes, Your Honor.

19 THE COURT: Good morning, Ms. Rivera.

20 MS. RIVERA: Hello. I'm sorry. My car
21 was like -- I had problems. I had to go house to house
22 and make phone calls and nobody could give me a ride.
23 So --

24 THE COURT: Are you okay?

25 MS. RIVERA: Yes. I'm out of breath.

STATE OF TEXAS VS. RUBEN GUTIERREZ

131

1 THE COURT: Okay.

2 MS. RIVERA: I'm okay.

3 THE COURT: All right. I think we're
4 ready to begin. The attorneys have a few questions to
5 ask of you.

6 MS. RIVERA: Okay.

7 THE COURT: If you'll just speak into the
8 microphone.

9 MS. RIVERA: Okay.

10 THE COURT: You may proceed.

11 MONICA RIVERA,

12 having been called as a prospective juror and, upon
13 her oath, was examined and testified as follows:

14 VOIR DIRE EXAMINATION

15 BY MR. BLAYLOCK:

16 Q. Good morning, Ms. Rivera.

17 A. Good morning.

18 Q. I'm John Blaylock. I met you on Tuesday,
19 remember?

20 A. Yes. Uh-huh.

21 Q. And this is Karen Fischer.

22 MS. RIVERA: Hi.

23 Q. (BY MR. BLAYLOCK) And we represent, as I told
24 you on Tuesday, the people of Cameron County and
25 prosecute crimes, right?

STATE OF TEXAS VS. RUBEN GUTIERREZ

132

1 A. Yes.

2 Q. I understand you've had a difficult morning
3 already.

4 A. Uh-huh.

5 Q. We'll start off slow.

6 A. Okay.

7 Q. First of all, tell me how you feel about
8 prosecutors.

9 A. Prosecutors. I feel okay about it. I have no
10 emotional feelings or -- I just have to hear what's
11 happening and then I'll go on from there.

12 Q. Okay. And how do you feel about defense
13 attorneys? Remember that question on your questionnaire?

14 A. Yes. I have no problems whatsoever. Just
15 normal.

16 Q. Okay. We're just normal people, right?

17 A. Yeah.

18 Q. My job is to bring you the facts of the case,
19 right?

20 A. Uh-huh.

21 Q. Would you also say my job is to do justice?

22 A. Yes.

23 Q. Okay. And how do you feel about justice?

24 A. I feel it should be allowed, you know. If
25 somebody committed a crime or -- yes, you do have to hear